# **EXHIBIT 1 REDACTED**

## Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 2 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1	UNITED STATES DISTRICT COURT					
2	NORTHERN DISTRICT OF CALIFORNIA					
3	SAN FRANCISCO DIVISION					
4	000					
5	WAYMO LLC,					
6	Plaintiff,					
	Case					
7	vs. No. 3:17-cv-00939-WHA					
8	UBER TECHNOLOGIES, INC.;					
	OTTOMOTTO LLC; OTTO TRUCKING LLC,					
9						
	Defendants.					
10	/					
11						
12						
13						
14	HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY					
15						
16	VIDEOTAPED DEPOSITION OF JOHN WILLIAM GURLEY					
17	THURSDAY, AUGUST 24, 2017					
18						
19						
20						
21	Reported by:					
22	Anrae Wimberley					
23	CSR No. 7778					
24	Job No. 2687934					
25	PAGES 1 - 182					
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1	UNITED STATES DISTRICT COURT
2	NORTHERN DISTRICT OF CALIFORNIA
3	SAN FRANCISCO DIVISION
4	000
5	WAYMO LLC,
6	Plaintiff,
	Case
7	vs. No. 3:17-cv-00939-WHA
8	UBER TECHNOLOGIES, INC.;
	OTTOMOTTO LLC; OTTO TRUCKING LLC,
9	
	Defendants.
10	/
11	
12	
13	HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
14	
15	Transcript of video-recorded deposition of
16	JOHN WILLIAM GURLEY taken at Morrison & Foerster LLP,
17	425 Market Street, 33rd Floor, San Francisco,
18	California, beginning at 8:37 a.m. and ending at 1:09
19	p.m. on Thursday, August 24, 2017, before Anrae
20	Wimberley, Certified Shorthand Reporter No. 7778.
21	
22	
23	
24	
25	
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1	APPEARANCES:
2	For Plaintiff Waymo LLC:
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20	-and-
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3	GOODWIN PROCTER LLP					
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10	For the Deponent:					
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18						
19	Also Present:					
20	VERITEXT LEGAL SOLUTIONS					
21	WARREN NGUYEN, VIDEOGRAPHER					
22	(415) 274-9977					
23	SFDepo@veritext.com					
24						
25	AARON BERGSTROM, Seniro Counsel for Uber					
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13		UBER00109871 through 877	
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1	THURSDAY, AUGUST 24, 2017; SAN FRANCISCO, CALIFORNIA;	
2	8:37 A.M.	
3		
4	THE VIDEOGRAPHER: We're on the record at 8:37 on	08:37:51
5	August 24th, 2017.	08:37:53
6	Please note that microphones are sensitive	08:37:56
7	and may pick up whispering, private conversation and	08:37:59
8	cellular interference. Please turn off all cell	08:38:03
9	phones or place them away from the microphones, as	08:38:06
10	they can interfere with the deposition audio.	08:38:10
11	Audio and video recording will be taking	08:38:12
12	place unless all parties agree to go off the record.	08:38:16
13	This is Media Unit 1 of the video-recorded	08:38:18
14	deposition of William Gurley, taken by the counsel of	08:38:22
15	the plaintiff in the matter Waymo LLC versus Uber	08:38:27
16	Technologies, Inc., et al., filed in the United States	08:38:30
17	District Court, Northern District of California,	08:38:33
18	San Francisco Division, Case No. 17-cv-00939.	08:38:41
19	My name is Warren Nguyen from the firm of	08:38:46
20	Veritext Legal Solutions, and I'm the videographer.	08:38:49
21	The court reporter is Anrae Wimberley with	08:38:52
22	Veritext Legal Solutions.	08:38:53
23	I'm not related to any party in this action,	08:38:57
24	nor am I financially interested in the outcome in any	08:39:00
25	way.	08:39:00
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1 If there are any objections to the	08:39:02
2 proceeding, please state them at the time of	your 08:39:04
appearance, beginning with the noticing attor	ney. 08:39:07
4 Will counsel please state your appea	rances. 08:39:10
5 MR. VERHOEVEN: Charles Verhoeven, Quinn	Emanuel,
on behalf of Waymo.	08:39:13
7 MR. JUDAH: James Judah, Quinn Emanuel, o	n behalf 08:39:14
8 of Waymo.	08:39:17
9 MR. FLUMENBAUM: Martin Flumenbaum, Paul	Weiss 08:39:17
10 Rifkind Wharton & Garrison, on behalf of Mr.	Gurley. 08:39:22
MS. BUNTING: Kristina Bunting, Paul Weis	s Rifkind 08:39:22
Wharton & Garrison, on behalf of Mr. Gurley.	08:39:28
MR. BRILLE: Mike Brille, Boies Schiller	& 08:39:29
14 Flexner, on behalf of Uber.	08:39:31
MR. TAKASHIMA: Ed Taskahima, Boies Schil	ler & 08:39:31
16 Flexner, for Uber and Ottomotto.	08:39:34
MR. BERGSTROM: Aaron Bergstrom, in-house	counsel 08:39:35
18 for Uber.	
MR. JACOBS: Michael Jacobs, Morrison & F	oerster, 08:39:37
20 for Uber and Ottomotto.	08:39:39
MR. BOOCK: Todd Boock from Goodwin & Pro	cter on 08:39:42
22 behalf of Otto Trucking LLC.	08:39:43
THE VIDEOGRAPHER: Will the court reporte	r please 08:39:47
swear in the witness.	08:39:48
25 //	08:39:48
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1	JOHN WILLIAM GURLEY,					
2	sworn as a witness by the Certified					
3	Shorthand Reporter, testified as follows:					
4	EXAMINATION					
5	BY MR. VERHOEVEN:	08:39:48				
6	Q. Good morning, Mr. Gurley.	08:40:02				
7	A. Good morning.	08:40:03				
8	Q. Could you just state your full name for the	08:40:05				
9	record.	08:40:06				
10	A. John William Gurley.	08:40:08				
11	Q. By whom are you currently employed?	08:40:11				
12	A. Benchmark Capital.	08:40:12				
13	Q. And what is your position?	08:40:13				
14	A. I'm a general partner.	08:40:15				
15	Q. Can you how long have you been a general	08:40:18				
16	partner at Benchmark?	08:40:20				
17	A. Since '99.	08:40:22				
18	Q. Do you have any knowledge about the Benchmark	08:40:27				
19	initial investment into Uber?	08:40:30				
20	A. Yes.	08:40:30				
21	Q. What was your relationship to that?	08:40:33				
22	A. I was the lead partner on effecting the	08:40:36				
23	investment in January of 2011.	08:40:40				
24	Q. So just to clarify, the investment became	08:40:45				
25	effective in January of 2011?	08:40:47				
	j E	Page 10				

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1	A. Yes.	08:40:47
2	Q. What was the nature of Uber's business at	08:40:54
3	that time?	08:40:54
4	A. To the best of my recollection, the company	08:41:01
5	was operating a service that allowed you to book a	08:41:06
6	black car. I think we're only operating in	08:41:09
7	San Francisco at the time.	08:41:10
8	Q. Did there come a time when you became aware	08:41:15
9	of the subject of AV technology?	08:41:20
10	MR. FLUMENBAUM: Just so the record is clear	08:41:25
11	BY MR. VERHOEVEN:	08:41:25
12	Q. Automatic vehicle, autonomous vehicle?	08:41:28
13	MR. BRILLE: Objection; form.	08:41:32
14	MR. BOOCK: Same objection.	
15	BY MR. VERHOEVEN:	
16	Q. Did there come a time when you became aware	08:41:35
17	of autonomous vehicle technology?	08:41:37
18	MR. FLUMENBAUM: Can one objection as to form	08:41:39
19	stand for everybody? Is that the rule here?	08:41:42
20	MR. BRILLE: Yes, that would be okay with me.	08:41:45
21	MR. FLUMENBAUM: Is that okay?	08:41:46
22	MR. BOOCK: That's fine for us.	08:41:48
23	MR. VERHOEVEN: Yes.	08:41:49
24	MR. FLUMENBAUM: I don't want to have to chime in	08:41:50
25	after somebody else does it.	08:41:53
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1	BY MR. VERHOEVEN:	08:41:53
2	Q. Do you have the question in might?	08:41:56
3	MR. FLUMENBAUM: You can ask for it to be	08:41:58
4	repeated.	08:41:58
5	THE WITNESS: No. No. I'm fine.	08:42:01
6	Yes.	
7	BY MR. VERHOEVEN:	
8	Q. When was that?	08:42:02
9	A. I don't have a specific recollection of that	08:42:04
10	date in the window.	08:42:05
11	Q. Was it after you excuse me.	08:42:07
12	Was it after Benchmark had invested in Uber?	08:42:12
13	A. Yes.	08:42:12
14	Q. Given that you don't have a specific window,	08:42:16
15	can you ballpark it for me, what year it was?	08:42:26
16	MR. FLUMENBAUM: Objection as to form.	08:42:32
17	THE WITNESS: My best recollection would be that	08:42:35
18	it around the time that it became part of the	08:42:37
19	public lexicon, you know, or slightly before, but I	08:42:41
20	don't recall exactly when that was.	08:42:43
21	BY MR. VERHOEVEN:	08:42:43
22	Q. When did you first discuss this subject with	08:42:48
23	Mr. Kalanick?	08:42:51
24	MR. FLUMENBAUM: Objection as to form.	08:42:51
25	You may answer.	08:42:54
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1	THE WITNESS: I don't have a specific recollection	08:42:55
2	of the first time.	08:42:57
3	BY MR. VERHOEVEN:	08:42:57
4	Q. Do you have a recollection of discussing this	08:43:00
5	technology with Mr. Kalanick?	08:43:03
6	A. I'm certain that it was discussed at some	08:43:05
7	point, yes.	08:43:06
8	Q. What's your best estimate of what that point	08:43:09
9	was?	08:43:09
10	A. My best guess would be probably 2015,	08:43:16
11	beginning of 2015, something like that.	08:43:18
12	Q. Okay. Could you tell me what Mr. Kalanick	08:43:23
13	said to you?	08:43:26
14	A. I don't have specific recollection of	08:43:28
15	specific language.	08:43:30
16	Q. Generally?	08:43:32
17	A. Mr. Kalanick had a has a strong belief,	08:43:50
18	that I think is mirrored in his comments in the public	08:43:53
19	record, that this was an important technology related	08:43:56
20	to Uber.	08:43:58
21	Q. Related to what?	08:44:07
22	MR. FLUMENBAUM: "Related to Uber."	08:44:09
23	THE WITNESS: Sorry.	08:44:10
24	BY MR. VERHOEVEN:	08:44:10
25	Q. Sorry.	08:44:10
	Pa	age 13

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1	A. That's okay.	08:44:11
2	Q. And why did he say it was related to Uber?	08:44:16
3	A. I think there's also a lot of public	08:44:23
4	discourse about this notion, but there's obviously,	08:44:29
5	because the service is reliant on vehicles, to the	08:44:32
6	extent the vehicles became automated, it had the	08:44:35
7	potential to impact the business and its relationship	08:44:39
8	with drivers and all those things.	08:44:42
9	Q. He told you it was really important to Uber's	08:44:45
10	business; right?	08:44:47
11	MR. BRILLE: Objection; form.	08:44:49
12	MR. FLUMENBAUM: You may answer.	08:44:50
13	THE WITNESS: I think it's a fair statement.	08:44:52
14	BY MR. VERHOEVEN:	08:44:52
15	Q. Okay. Did he tell you it was an existential	08:44:54
16	threat?	08:44:56
17	A. He was quoted publicly as saying that. I	08:44:59
18	don't recall him telling me specifically that.	08:45:01
19	Q. Did you agree with him?	08:45:03
20	A. I don't agree with that assertion.	08:45:05
21	Q. Okay. Do you think that autonomous vehicle	08:45:09
22	technology is important to Uber?	08:45:12
23	A. It could be important.	08:45:13
24	Q. When would it not be important?	08:45:16
25	A. Well, there's an argument that the technology	08:45:19
	Pa	age 14

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1	threatens the service provider. I don't think, from	08:45:23
2	my own point of view, that anything Boeing builds	08:45:28
3	threatens United or Delta's business, from my point of	08:45:31
4	view. I have a different point of view on that topic	08:45:37
5	than he does.	08:45:38
6	Q. Okay. In what instances would it be a	08:45:40
7	threat?	08:45:41
8	MR. FLUMENBAUM: Objection as to form.	08:45:45
9	Could you be a little more clear, given his	08:45:47
10	prior answer?	08:45:48
11	BY MR. VERHOEVEN:	08:45:48
12	Q. Okay. I asked you, quote, "Do you think that	08:46:10
13	autonomous vehicle" the whole question isn't in	08:46:17
14	there.	08:46:17
15	I asked you whether you thought autonomous	08:46:20
16	vehicle technology would be important to Uber, and you	08:46:23
17	said, "It could be important."	08:46:24
18	Do you remember that?	08:46:25
19	A. Yes.	08:46:25
20	Q. Okay. Why could it be important?	08:46:29
21	A. There are cars that underline the operations	08:46:34
22	of the service. There are drivers that are in those	08:46:37
23	cars. There's the relationships between the drivers	08:46:40
24	and the that are important to the company. And so	08:46:43
25	if this new technology came along that displaced	08:46:47
	Pa	age 15

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1	them this is well documented in the public	08:46:50
2	discourse that would cause relationship issues for	08:46:52
3	the company with its drivers.	08:46:54
4	Q. You have competitors to Uber?	08:46:59
5	A. Yes.	08:46:59
6	Q. Can you name some?	08:47:01
7	A. In different in Asia, there's Grab. In	08:47:10
8	India, there's Ola. In the U.S., there's Lyft. In	08:47:15
9	Latin America there's 99Taxi. There's Careem.	08:47:21
10	Q. So	
11	MR. FLUMENBAUM: Hold on.	08:47:23
12	Are you finished with your answer?	08:47:27
13	THE WITNESS: I didn't know how exhaustive he	08:47:29
14	wanted me to be.	08:47:30
15	BY MR. VERHOEVEN:	08:47:30
16	Q. In the United States.	08:47:33
17	A. In the United States. Lyft. There were	08:47:33
18	others. I don't know if they're still operational.	08:47:37
19	Q. So if Lyft had the autonomous vehicle	08:47:42
20	technology that worked and passed through the	08:47:45
21	regulatory hurdles before Uber, would that be a threat	08:47:49
22	to Uber?	08:47:50
23	MR. FLUMENBAUM: Objection as to form.	08:47:52
24	You may answer.	08:47:53
25	THE WITNESS: And no one else had; is that the	08:47:56
	P	age 16

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1	implication?	08:47:57
2	BY MR. VERHOEVEN:	08:47:57
3	Q. Yes.	08:47:58
4	A. Sure. Yes. Theoretically. Actually, let me	08:48:02
5	step back.	08:48:03
6	That would be heavily dependent on the cost	08:48:05
7	of the vehicle. Because if the vehicle cost 5X more	08:48:09
8	than a traditional vehicle, it would more than offset	08:48:13
9	the cost of the driver, in which case I don't think it	08:48:16
10	would have an impact at all.	08:48:17
11	Q. What is the cost to Uber for the human driver	08:48:20
12	expressed as a percentage of dollar revenue, if you	08:48:28
13	know?	08:48:28
14	A. What percentage of the revenue goes to the	08:48:32
15	driver?	08:48:33
16	Q. Yes.	08:48:34
17	A. I don't know if that's privileged or not. I	08:48:37
18	just don't know.	08:48:39
19	MR. BRILLE: So we have a protective order in the	08:48:42
20	case. And it is definitely highly confidential. And	08:48:45
21	we will designate anything that is business	08:48:47
22	confidential	08:48:48
23	THE WITNESS: Okay.	
24	MR. FLUMENBAUM: Is it do I have to invoke the	08:48:52
25	protective order for purposes of this deposition?	08:48:54
	Pa	age 17

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1	MR. BRILLE: You do not. We have an agreement	08:48:56
2	with the other side that we designate transcripts	08:48:59
3	after they come out, and we will take care of	08:49:01
4	something like that.	08:49:02
5	MR. FLUMENBAUM: So as far as I'm concerned, this	08:49:04
6	is so any business confidential information	08:49:06
7	MR. BRILLE: Correct.	08:49:07
8	MR. FLUMENBAUM: he can testify to?	08:49:08
9	MR. BRILLE: Yes, that is correct.	08:49:09
10	MR. FLUMENBAUM: Okay. And I don't have to do	08:49:09
11	I get to review the transcript as well?	08:49:13
12	MR. BRILLE: Yes. Absolutely.	08:49:14
13	MR. FLUMENBAUM: Okay. So I just want to make	08:49:15
14	sure that I have that opportunity as well.	08:49:18
15	MR. BRILLE: Yeah.	08:49:19
16	MR. FLUMENBAUM: And in the meantime, who can	08:49:21
17	share this deposition?	08:49:23
18	MR. BRILLE: In	08:49:27
19	MR. FLUMENBAUM: Until we review this stuff?	08:49:29
20	MR. VERHOEVEN: Should we go off the record for	08:49:30
21	this.	
22	MR. BRILLE: Let's go off the record, yes.	08:49:33
23	THE VIDEOGRAPHER: Off the record at 8:49 a.m.	08:49:36
24	(Discussion off the record.)	08:49:55
25	THE VIDEOGRAPHER: Back on the record at 8:49 a.m.	08:49:58
	P	age 18

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1	BY MR. VERHOEVEN:	08:49:58
2	Q. I think you're allowed to answer the	08:50:02
3	question.	08:50:02
4	A. I honestly don't have the documents right in	08:50:04
5	front of me, so	08:50:05
6	Q. Of course.	
7	A. And I would also say different services have	08:50:08
8	different answers on this, so there's no specifics.	08:50:11
9	But somewhere between, you know,	08:50:15
10	typically, of the revenue goes to the driver.	08:50:19
11	Q. And so if you didn't have to pay drivers and	08:50:23
12	you could use an autonomous vehicle for your service,	08:50:26
13	that would be a huge competitive advantage, assuming	08:50:29
14	others couldn't do that?	08:50:32
15	A. Depends on the depreciation cost of the car.	08:50:36
16	If the vehicle costs five times more than a standard	08:50:40
17	car, you have to eat that depreciation cost to deliver	08:50:40
18	that service.	
19	Q. But if the vehicle is roughly similarly	08:50:43
20	priced as a regular car, there would be a huge	08:50:46
21	advantage for the first mover in that technology;	08:50:50
22	right?	08:50:50
23	MR. FLUMENBAUM: Objection as to form.	08:50:52
24	You're speculating.	08:50:54
25	MR. VERHOEVEN: Counsel, I don't know if you're	08:50:56
	P	age 19

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1	familiar with Judge Alsup's rules, but he does not	08:50:59
2	allow anything you're not allowed to say anything	08:51:03
3	more than "object to form."	08:51:04
4	MR. FLUMENBAUM: Okay. Objection as to form.	08:51:06
5	BY MR. VERHOEVEN:	08:51:06
6	Q. Do you have the question in mind?	08:51:08
7	A. No one has delivered a fully autonomous	08:51:10
8	vehicle that could operate in a massive service at	08:51:14
9	scale. So knowing presuming that you know the cost	08:51:17
10	of that would be speculative, from my point of view.	08:51:21
11	So, yes, if you could do it, then, yes, that would be	08:51:25
12	true.	08:51:25
13	Q. If you could if you were a first mover	08:51:27
14	with working, approved autonomous vehicles in your	08:51:33
15	business model, that entity would have a huge	08:51:37
16	advantage competitively?	08:51:39
17	MR. FLUMENBAUM: Objection; form.	08:51:40
18	THE WITNESS: If you could move millions of units	08:51:43
19	at scale at a price that's equivalent to a normal car,	08:51:47
20	which, I would argue, is very hard to prove someone	08:51:50
21	could do at this moment in time. But, yes.	08:51:53
22	BY MR. VERHOEVEN:	08:51:53
23	Q. Okay. And that's why Mr. Kalanick was really	08:51:57
24	interested in developing autonomous vehicle	08:51:59
25	technology; right?	08:52:01
	Pa	age 20

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THE WITNESS: I think that's fair.  BY MR. VERHOEVEN:  Q. Did you in this conversation we're talking 08:52:16  about with Mr. Kalanick, did you express to him your 08:52:22  view on whether Uber should move forward with this 08:52:27  technology?  MR. BRILLE: Objection; form.  9 THE WITNESS: Keep going?  08:52:34  10 BY MR. VERHOEVEN:  Q. Every time there's an objection to form, you 08:52:38			
BY MR. VERHOEVEN:  Q. Did you in this conversation we're talking about with Mr. Kalanick, did you express to him your view on whether Uber should move forward with this technology?  MR. BRILLE: Objection; form.  HE WITNESS: Keep going?  BY MR. VERHOEVEN: Q. Every time there's an objection to form, you still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not going to tell you not to.  THE WITNESS: Okay, great.	1	MR. FLUMENBAUM: Objection as to form.	08:52:06
Q. Did you in this conversation we're talking 08:52:16 about with Mr. Kalanick, did you express to him your 08:52:22 view on whether Uber should move forward with this 08:52:23 technology? 08:52:33 MR. BRILLE: Objection; form. 08:52:33 THE WITNESS: Keep going? 08:52:34  BY MR. VERHOEVEN: 08:52:34  Q. Every time there's an objection to form, you 08:52:36 still have to answer. 08:52:39 MR. FLUMENBAUM: You have to answer. I'm not going to tell you not to. THE WITNESS: Okay, great.	2	THE WITNESS: I think that's fair.	08:52:08
about with Mr. Kalanick, did you express to him your view on whether Uber should move forward with this 08:52:27 technology? 08:52:32 MR. BRILLE: Objection; form. 08:52:33 THE WITNESS: Keep going? 08:52:34 10 BY MR. VERHOEVEN: 08:52:34 11 Q. Every time there's an objection to form, you 12 still have to answer. 08:52:35 MR. FLUMENBAUM: You have to answer. I'm not 14 going to tell you not to. 15 THE WITNESS: Okay, great. 16	3	BY MR. VERHOEVEN:	08:52:08
view on whether Uber should move forward with this  7 technology?  8 MR. BRILLE: Objection; form.  9 THE WITNESS: Keep going?  10 BY MR. VERHOEVEN:  Q. Every time there's an objection to form, you  11 still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not  12 going to tell you not to.  THE WITNESS: Okay, great.  16	4	Q. Did you in this conversation we're talking	08:52:16
THE WITNESS: Okay, great.  technology?  MR. BRILLE: Objection; form.  08:52:34  08:52:34  08:52:34  08:52:34  08:52:34  08:52:34  08:52:34  08:52:34  10 BY MR. VERHOEVEN:  08:52:34  11 Q. Every time there's an objection to form, you 08:52:38  12 Still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not  14 going to tell you not to.  THE WITNESS: Okay, great.	5	about with Mr. Kalanick, did you express to him your	08:52:22
MR. BRILLE: Objection; form.  9 THE WITNESS: Keep going?  08:52:34  10 BY MR. VERHOEVEN:  Q. Every time there's an objection to form, you  12 still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not  14 going to tell you not to.  THE WITNESS: Okay, great.  16	6	view on whether Uber should move forward with this	08:52:27
9 THE WITNESS: Keep going?  10 BY MR. VERHOEVEN:  Q. Every time there's an objection to form, you  11 08:52:38  12 still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not  13 going to tell you not to.  THE WITNESS: Okay, great.  16	7	technology?	08:52:29
BY MR. VERHOEVEN:  Q. Every time there's an objection to form, you 08:52:38  still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not  going to tell you not to.  THE WITNESS: Okay, great.	8	MR. BRILLE: Objection; form.	08:52:33
Q. Every time there's an objection to form, you 08:52:38  12 still have to answer. 08:52:38  13 MR. FLUMENBAUM: You have to answer. I'm not  14 going to tell you not to.  15 THE WITNESS: Okay, great.  16	9	THE WITNESS: Keep going?	08:52:34
still have to answer.  MR. FLUMENBAUM: You have to answer. I'm not going to tell you not to.  THE WITNESS: Okay, great.	10	BY MR. VERHOEVEN:	08:52:34
MR. FLUMENBAUM: You have to answer. I'm not going to tell you not to.  THE WITNESS: Okay, great.	11	Q. Every time there's an objection to form, you	08:52:38
going to tell you not to.  THE WITNESS: Okay, great.	12	still have to answer.	08:52:39
THE WITNESS: Okay, great.	13	MR. FLUMENBAUM: You have to answer. I'm not	
	14	going to tell you not to.	
	15	THE WITNESS: Okay, great.	
Page 21	16		
Page 21			
		Po	age 21

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3	BY MR. VERHOEVEN:	08:53:22
4	Q. Mr. Kalanick wanted to be the first with a	08:53:25
5	vehicle that had this technology in the marketplace,	08:53:27
6	didn't he?	08:53:28
7	MR. FLUMENBAUM: Objection as to form.	08:53:31
8	THE WITNESS: I don't have specific recollection	08:53:32
9	that he said, I definitely want to be first in this	08:53:36
10	technology. But that's different from whether or not	08:53:41
11	he did want to be first. I just don't have a specific	08:53:43
12	recollection.	08:53:44
13	BY MR. VERHOEVEN:	08:53:44
14	Q. So he never told you that he wanted to be the	08:53:47
15	first mover with this technology?	08:53:50
16	A. I don't have a recollection of that specific	08:53:52
17	statement.	08:53:53
18	Q. He never told you that it would be a huge	08:53:55
19	advantage if you were the first company out there in	08:53:59
20	the market with this technology?	08:54:02
21	A. I don't recall that specific statement, but I	08:54:04
22	also recall conversations where	
	Pa	age 22

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		08:54:38
7	Q. Okay. Did there come a time when Uber	08:54:46
8	started investing its money into this technology, this	08:54:52
9	autonomous vehicle technology?	08:54:54
10	A. Yes.	08:54:54
11	Q. When was that?	08:54:55
12	A. My first recollection of a substantial effort	08:54:59
13	related to the Carnegie Mellon transaction.	08:55:05
14	Q. And what do you mean when you say "the	08:55:07
15	Carnegie Mellon transaction"?	08:55:08
16	A. Once again, I think this is public record, so	08:55:14
17	you could find it with a Google search, but there was	08:55:17
18	a large transaction that involved some of the	08:55:20
19	employees of Carnegie Mellon coming on board or	08:55:24
20	some of the people associated with Carnegie Mellon	08:55:26
21	coming on board. And we set up a research	08:55:30
22	headquarters for autonomous in Pittsburgh.	08:55:33
23	Q. So was that a transaction with the group that	08:55:37
24	came over? You said there was a large transaction.	08:55:44
25	MR. BRILLE: Objection; form.	08:55:45
	Pa	age 23

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1	THE WITNESS: I don't understand the question.	08:55:48
2	BY MR. VERHOEVEN:	08:55:48
3	Q. Well, you said there's a large transaction in	08:55:50
4	which a number of Carnegie Mellon folks came over.	08:55:54
5	A. Correct.	08:55:54
6	Q. And you set up a lab, or whatever you want to	08:55:58
7	call it, in Pittsburgh; right?	08:55:59
8	A. Right.	08:55:59
9	Q. And so my question was, when you say "a large	08:56:03
10	transaction," are you referring to like a single	08:56:05
11	transaction where the whole group came over	08:56:08
12	A. I don't remember exactly if there were	08:56:10
13	multiple pieces in that. I'm just referring to it as	08:56:13
14	a single event.	08:56:15
15	Q. Did the board review and approve that?	08:56:18
16	A. I believe so.	08:56:19
17	Q. Okay. And what did Mr who presented	08:56:26
18	the who recommended it to the board?	08:56:29
19	A. I don't have specific recollection of like	08:56:36
20	who presented it, but I my best guess would be that	08:56:42
21	it was Mr. Kalanick.	08:56:43
22	Q. But you don't remember what he said in	08:56:45
23	connection with that?	08:56:47
24	A. I don't, not at this moment in time.	08:56:50
25	Q. Do you remember any discussions by the board	08:56:59
	Pa	age 24

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1	about the importance of this technology, autonomous	08:57:05
2	vehicle technology?	08:57:07
3	MR. FLUMENBAUM: At around the time of the	08:57:08
4	Carnegie Mellon issue?	08:57:10
5	MR. VERHOEVEN: I asked my question; you can't	08:57:12
6	edit it.	08:57:15
7	BY MR. VERHOEVEN:	08:57:15
8	Q. Go ahead.	
9	MR. BRILLE: But he can ask for clarification.	08:57:17
10	MR. VERHOEVEN: There's no you can object to	08:57:19
11	form or you can object on privilege grounds, nothing	08:57:22
12	else.	08:57:23
13	MR. FLUMENBAUM: Objection as to form.	08:57:27
14	BY MR. VERHOEVEN:	08:57:27
15	Q. Okay. Do you recall any discussions at the	08:57:29
16	board level about the importance of this technology?	08:57:33
17	A. Only yes, but only in a general sense. I	08:57:36
18	don't recall any specific one-on-one conversation.	08:57:41
19	Q. So when you say "in a general sense," you	08:57:44
20	mean in the sense of a presentation being made to the	08:57:47
21	group?	08:57:48
22	A. No, I just mean in the sense that it was	08:57:54
23	discussed more than once that autonomous technology	08:58:02
24	was important to ridesharing and that we needed to	08:58:07
25	have an understanding of that, an effort in that, and	08:58:13
	P	age 25

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1	know where that technology was evolving relative to 08:58:16			
2	our service. 08:			
3	Q. And how often did this come up with the	08:58:21		
4	board?	08:58:22		
5	A. I would say only around Carnegie Mellon	08:58:39		
6	and Otto were the only two times where it was	08:58:43		
7	discussed in depth. I don't think it was a frequent 08:58:50			
8	topic of every board meeting.	08:58:52		
9	Q. Are you still with on the board at Uber?	08:59:05		
10	A. I am not.	08:59:06		
11	Q. When did you cease being on the board?	08:59:08		
12	A. I believe it was mid to late June of this	08:59:17		
13	year.	08:59:17		
14	Q. And I may have asked this and, if I did, I	08:59:22		
15	apologize.	08:59:22		
16	But when did you first become a board member?	08:59:25		
17	A. In January of 2011.	08:59:27		
18	Q. When you were a member of the board, is it a	08:59:33		
19	fair statement to say that you were very engaged with	08:59:37		
20	the company?	08:59:41		
21	MR. FLUMENBAUM: Objection as to form.	08:59:51		
22	THE WITNESS: I'll answer yes. There's a question	08:59:54		
23	as to whether like relative to what, you know.	08:59:58		
24	BY MR. VERHOEVEN:	08:59:58		
25	Q. Is it fair to say that you were the most	09:00:00		
	Pa	age 26		

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1	engaged board member with respect to Uber?	09:00:03
2	MR. FLUMENBAUM: Objection as to form.	09:00:14
3	THE WITNESS: It's possible. It would be	09:00:15
4	conjecture from my point solely because I don't know	09:00:19
5	of all the other meetings that the other board members	09:00:22
6	may or may not have been having.	09:00:24
7	BY MR. VERHOEVEN:	09:00:24
8	Q. Do you feel as though you were the most	09:00:26
9	engaged board member?	09:00:28
10	MR. BRILLE: Objection; form.	09:00:29
11	MR. FLUMENBAUM: Objection as to form.	09:00:29
12	THE WITNESS: It's possible.	09:00:32
13	BY MR. VERHOEVEN:	09:00:32
14	Q. Can you think of anyone else on the board who	09:00:35
15	was more engaged than you?	09:00:38
16	A. No.	09:00:41
17	Q. You were also in addition to being a	09:00:45
18	member of the board of directors, you were also on the	09:00:48
19	compensation committee; is that right?	09:00:50
20	A. That is correct.	09:00:51
21	Q. And what was your role on the compensation	09:00:55
22	committee?	09:00:58
23	A. Compensation committee would look over all	09:01:02
24	material compensation requests for new hires. We'd	09:01:11
25	get involved in review process, bonus determination.	09:01:20
	Pa	age 27

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1	Q. Okay. Anything else, generally?	09:01:24
2	A. Look after the long-term compensation	09:01:30
3	structure of the company and how those programs work	
4		09:01:37
	and are set up, how they scale.	
5	Q. Were you on any other committees at Uber	09:01:41
6	besides the compensation committee?	09:01:43
7	A. I joined the audit committee in, I believe,	09:01:48
8	March. It might have been February. Sometime in	09:01:53
9	the early 2017.	09:01:55
10	Q. You said the audit committee?	09:01:59
11	A. Yes.	09:01:59
12	Q. And what were your responsibilities on the	09:02:02
13	audit committee?	09:02:04
14	A. To interface with PwC, our lead auditor, to	09:02:10
15	review the status of the audits. To interface with	09:02:21
16	the internal audit function. To interface with the	09:02:25
17	compliance function. To work with the other members	09:02:28
18	of the committee on all those topics.	09:02:30
19	Q. What is the compliance function?	09:02:35
20	A. Like many other companies, Uber has a chief	09:02:41
21	compliance officer that looks after internal	09:02:47
22	investigation, whistle-blower claims, those kind of	09:02:51
23	things.	09:02:52
24	Q. Were you on any other committees when you	09:02:55
25	were working at Uber?	09:02:56
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1	A. Yes.	09:02:58
2	MR. FLUMENBAUM: Objection; form.	09:02:59
3	BY MR. VERHOEVEN:	09:02:59
13	Q. Are you familiar with the fact that the court	09:03:45
14	in the Waymo litigation in the Northern District of	09:03:49
15	California issued a preliminary injunction?	09:03:51
16	MR. FLUMENBAUM: Um	09:03:55
17	MR. VERHOEVEN: Just asking if he knows about it.	09:03:58
18	MR. FLUMENBAUM: Right.	09:03:58
19	If your knowledge is solely based on	09:04:00
20	conversations with counsel, then I don't believe you	09:04:04
21	can answer that question.	09:04:06
22	We are I'm under instructions to	09:04:09
23	preserve by the company that Mr. Gurley is to	09:04:14
24	preserve all privileges that the company has. And I	09:04:17
25	received a letter to that effect, and I'm going to	09:04:20
	P	age 29

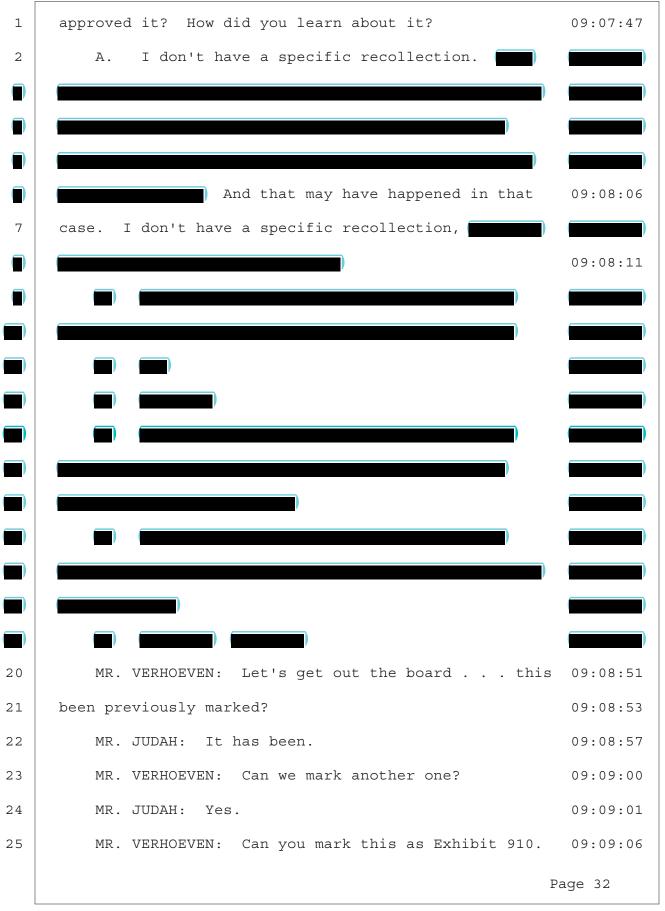
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1	follow that instruction.	09:04:26
2	But so to the extent that you know about	09:04:29
3	the preliminary injunction from other sources other	09:04:32
4	than counsel, and that could include public	09:04:38
5	THE WITNESS: Yeah, it was in the media, so I'm	09:04:40
6	aware of it from that.	09:04:43
7	MR. FLUMENBAUM: Okay.	09:04:43
8	BY MR. VERHOEVEN:	
15	Q. All right. Have you exhausted the list of	09:05:16
16	committees that you can recall being on?	09:05:19
17	A. Yes.	09:05:20
18	Q. Is it a fair statement to say that in the	09:05:44
19	years 2016, '15 and until you left the board in '17,	09:05:52
20	that you were in regular contact with Mr. Kalanick	09:05:56
21	about Uber?	09:05:59
22	MR. FLUMENBAUM: Objection as to form.	09:06:00
23	You may answer.	09:06:02
24	THE WITNESS: So certainly he we were both	09:06:09
25	present at most board meetings, so we had contact	09:06:13
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1	through that. In terms of one-on-one contact, there	09:06:17
2	would be periods where there would be lots of it,	09:06:20
3	typically around recruiting, that kind of thing, and	09:06:23
4	then there would be periods where there wouldn't be	09:06:26
5	much. So it wasn't consistent through that time	09:06:29
6	frame.	09:06:30
7	BY MR. VERHOEVEN:	09:06:30
8	Q. Around May 2016, is it fair to say that you	09:06:35
9	were in regular contact with Mr. Kalanick concerning	09:06:38
10	his management of Uber?	09:06:41
11	A. I just want to be careful with the definition	09:06:52
12	of "regular." I'd say consistent amount of contact	09:06:56
13	that we have with all the types of companies that we	09:07:00
14	invest in. It wasn't abnormally high or low.	09:07:07
15	Q. When did you first you	09:07:13
16	referenced withdrawn.	09:07:16
17	You referenced the Otto transaction earlier	09:07:20
18	in your testimony.	09:07:21
19	A. Um-hum.	09:07:22
20	Q. When did you first learn about the	09:07:24
21	possibility of that transaction?	09:07:26
22	A. Shortly before the board approved it.	09:07:30
23	Q. When did the board approve it?	09:07:34
24	A. I don't have the date in front of me.	09:07:37
25	Q. Who told you about it before the board	09:07:45
	Pa	age 31

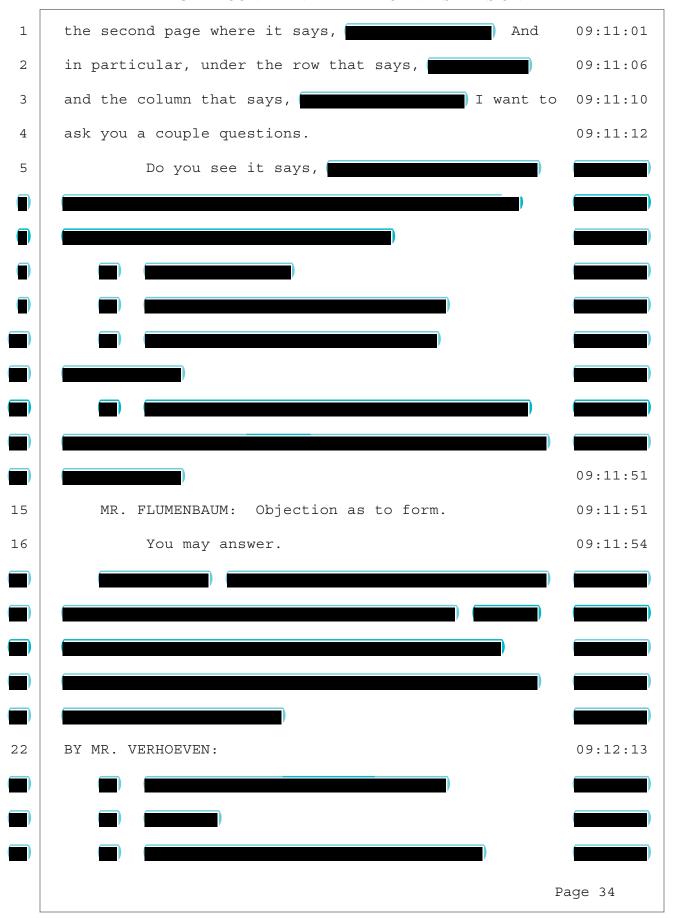
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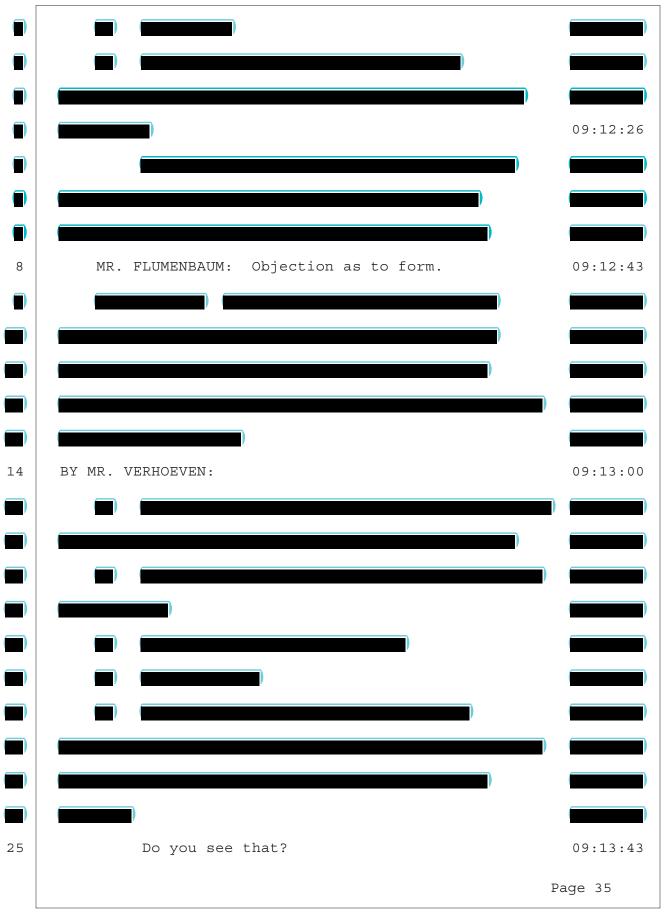
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1		(Plaintiff's Exhibit 910 was marked.)	09:09:35
2	BY MR. VERHOEVEN:		
3	Q.	Mr. Gurley, take a look at Exhibit 910.	09:09:38
4		And my first question will be, do you	09:09:41
5	recognize	e this document?	09:09:44
6		(Witness reviews document.)	09:10:13
7	А.	Yes, I believe these are the slides that wer	e 09:10:15
8	presente	d to the board in that meeting that we were	09:10:18
9	just dis	cussing.	09:10:19
10	Q.	The meeting in which the Otto transaction wa	s 09:10:22
11	approved	?	09:10:23
12	Α.	Yes.	09:10:23
13	Q.	It says,	09:10:27
14		What does refer to?	09:10:29
15	Α.	I don't have any data on that topic.	09:10:31
16	Q.	Would it be fair to conclude that it refers	09:10:34
17	to the Otto transaction?		09:10:36
18	Α.	Yes.	09:10:36
19	Q.	And it's dated April 11th, 2016.	09:10:40
20		Do you see that?	09:10:41
21	Α.	Yes.	09:10:41
22	Q.	Is that the day in which the board approved	09:10:45
23	the Otto	transaction?	09:10:46
24	Α.	I would presume so.	09:10:54
25	Q.	The second page direct your attention to	09:10:57
			Page 33

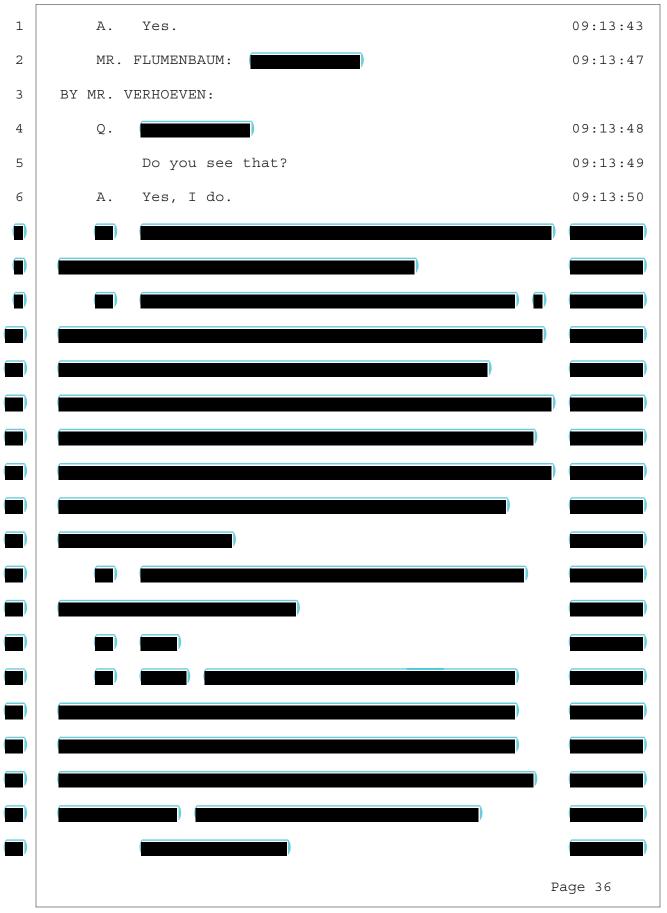
#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 35 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 36 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



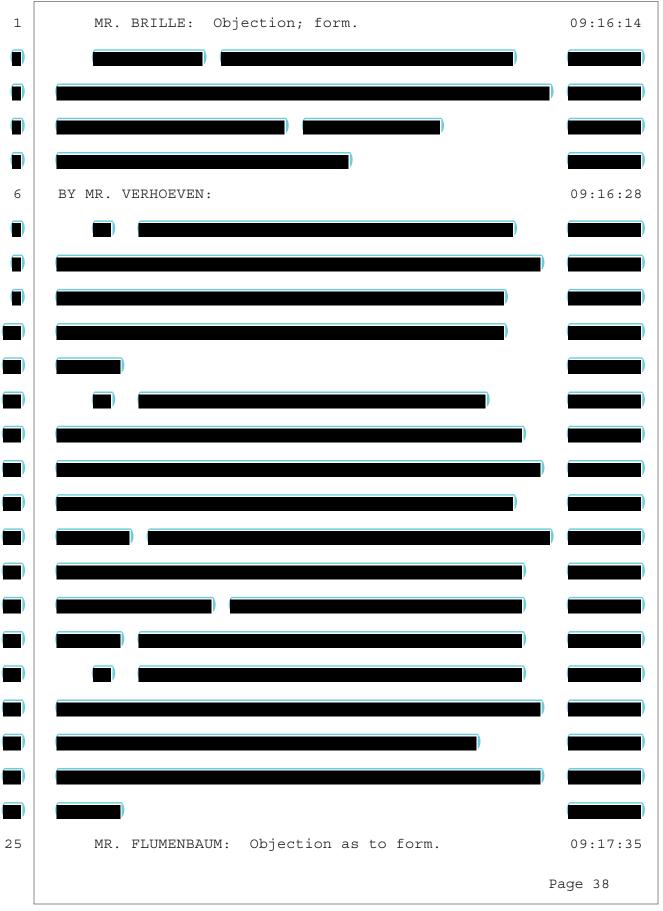
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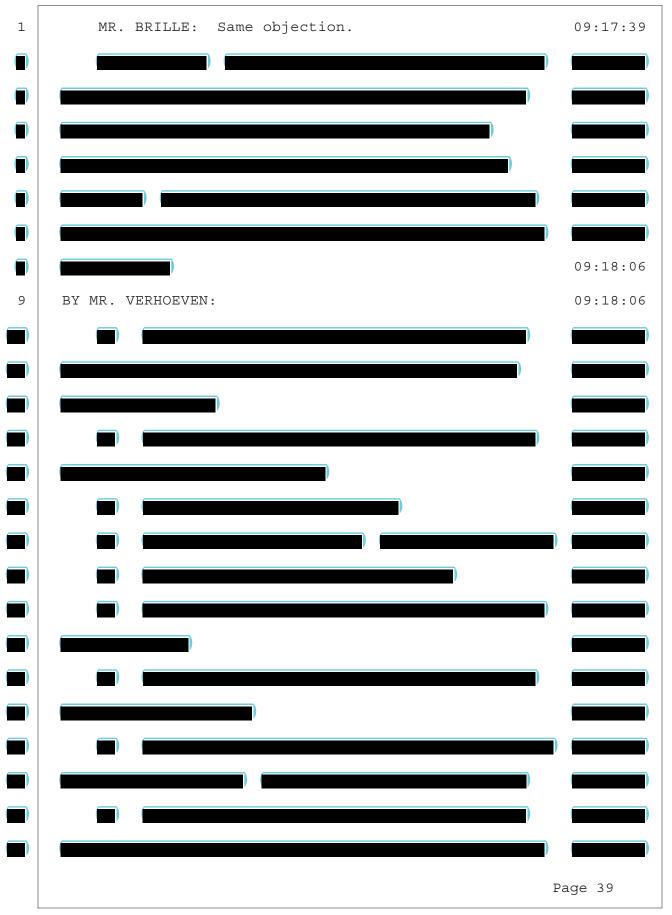
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 38 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

2	Q. You understood at the time that Uber was	09:15:03
3	formed by former employees of Waymo/Google?	09:15:08
4	MR. BRILLE: Objection; form.	09:15:08
5	You said, "Uber."	09:15:10
6	MR. VERHOEVEN: Thank you for catching that.	09:15:14
7	BY MR. VERHOEVEN:	09:15:14
10	MR. FLUMENBAUM: Objection as to form.	09:15:25
11	You may	09:15:25
14	BY MR. VERHOEVEN:	09:15:34
		Page 37

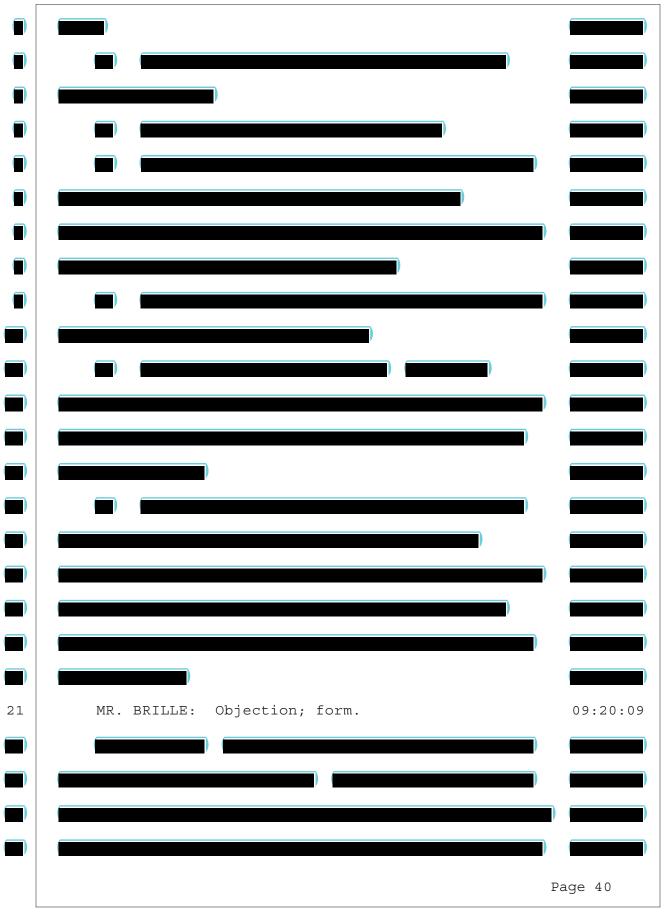
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 39 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



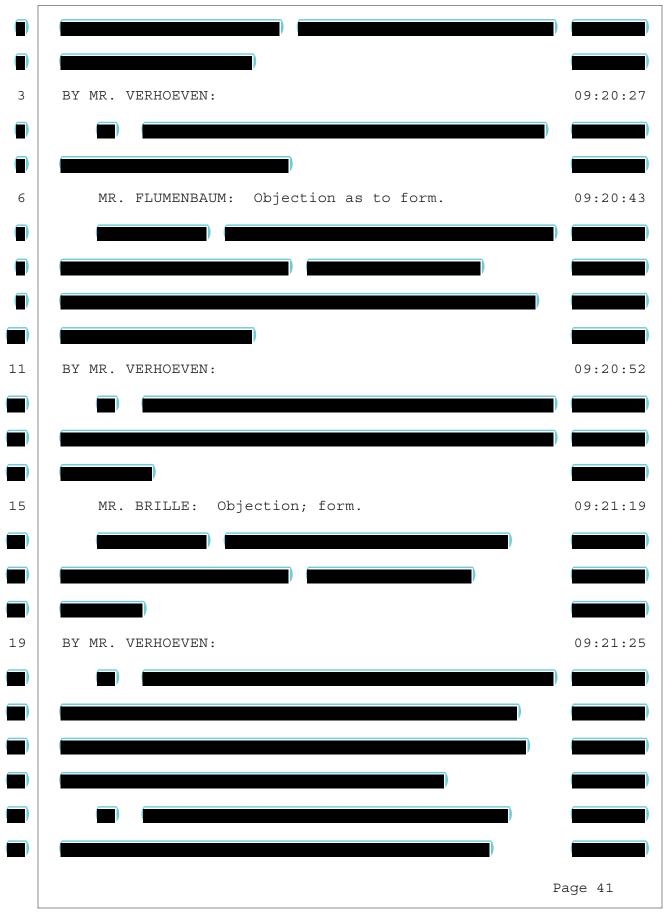
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 40 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 41 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



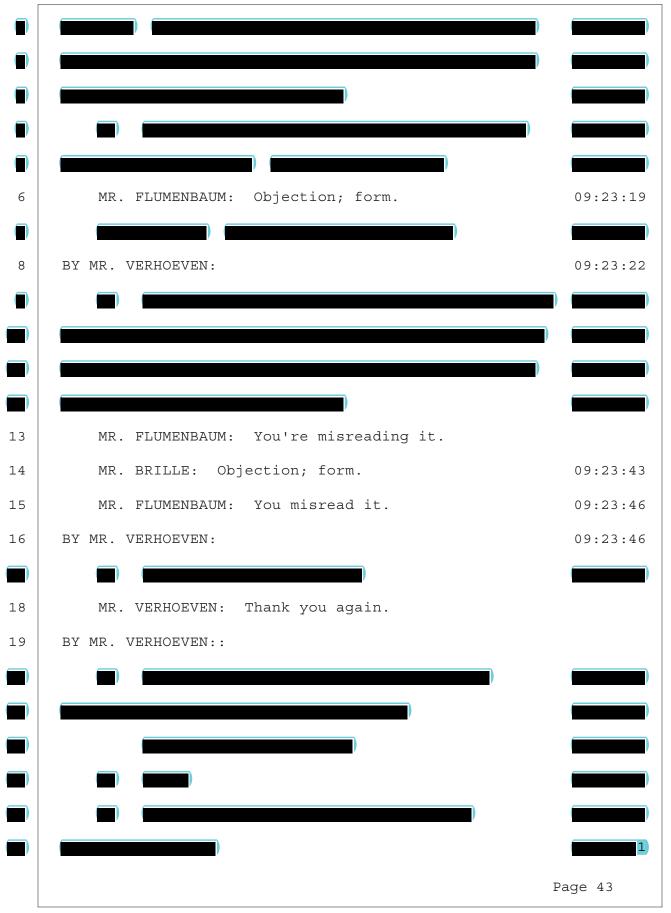
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 42 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



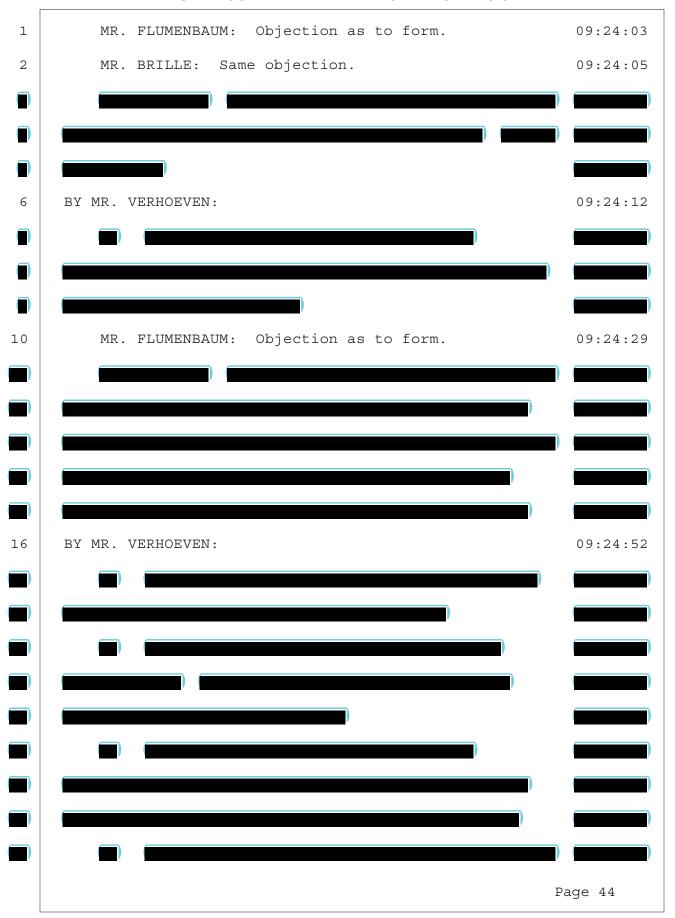
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 43 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



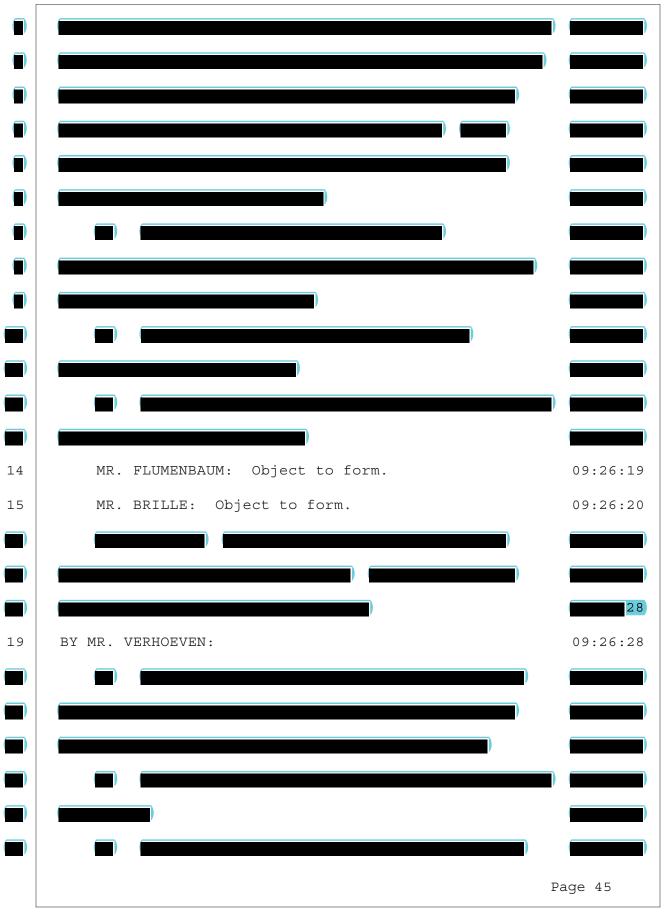
### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 44 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



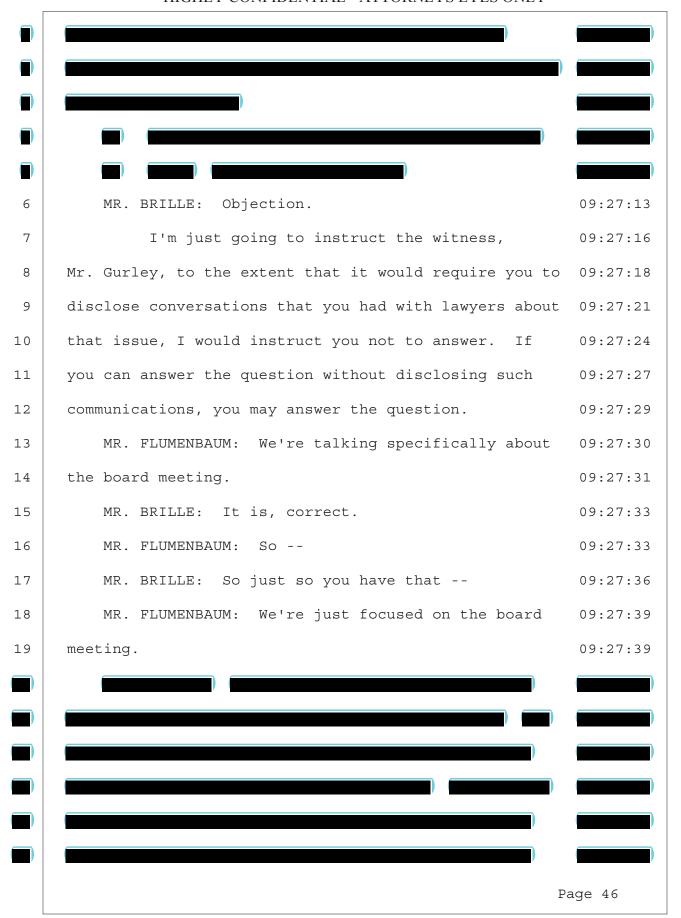
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 45 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 46 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



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)		
:	BY MR. VERHOEVEN:	09:28:23
)		
)		
)		
)	MR. BRILLE: I'm going to interrupt here.	09:28:44
-	THE WITNESS: Okay.	
2	MR. BRILLE: And I'm going to instruct the witness	09:28:46
3	not to answer the question.	09:28:48
Ŀ	The due diligence effort, as you know,	09:28:49
5	Charlie, has privilege has been asserted over that.	09:28:53
5	Whether	
7	MR. VERHOEVEN: You don't need to make a speech.	09:28:55
3	You can either instruct or whatnot. I don't need a	09:28:56
)	speech to coach the witness.	09:29:00
•	MR. BOOCK: Can the privilege objections be mutual	09:29:03
-	for all parties as well	09:29:04
1	MR. VERHOEVEN: Sure, if you all want to take a	09:29:05
3	privilege on a meeting we've been talking about for	09:29:06
:	half an hour.	09:29:08
	MR. BRILLE: First of all, there's no coaching	09:29:10
	P	age 47

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1	going on, so don't accuse me of that.	09:29:14
2	MR. VERHOEVEN: Well, then don't do it.	09:29:16
3	MR. BRILLE: Don't accuse me of that, Charlie.	09:29:16
4	Okay. I'm lodging a privilege objection and I'm going	9 09:29:19
5	to instruct the witness not to answer the question.	
6	Don't throw around false accusations in depositions.	09:29:25
7	MR. VERHOEVEN: Then just either instruct or	09:29:26
8	don't. You don't need to explain your reasons.	09:29:30
9	BY MR. VERHOEVEN:	09:29:30
10	Q. So are you going to follow the instruction	09:29:35
11	not to answer that question?	09:29:37
12	MR. FLUMENBAUM: I think we have to until the	09:29:38
13	judge clarifies it.	09:29:40
19	MR. VERHOEVEN: Well, we'll see.	09:29:56
20	MR. FLUMENBAUM: All right.	09:29:57
21	BY MR. VERHOEVEN:	09:29:57
22	Q. So what did Mr. Kalanick say about the due	09:30:05
23	diligence effort at the meeting?	09:30:06
24	MR. BRILLE: Same instruction.	09:30:07
25	BY MR. VERHOEVEN:	09:30:07
		Page 48

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6	Q. What was the third party looking for?	09:30:27
7	MR. BRILLE: Same instruction.	09:30:28
8	Do not answer.	09:30:29
9	BY MR. VERHOEVEN:	09:30:29
10	Q. Was the subject of the due diligence whether	09:30:32
11	or not there had been a violation of withdrawn.	09:30:37
12	Was the substance of the due diligence	09:30:39
13	whether or not these key employees had taken IP from	09:30:47
14	their former employer?	09:30:48
15	MR. BRILLE: Same instruction.	09:31:01
16	BY MR. VERHOEVEN:	09:31:01
17	Q. Did you say anything about the subject of	09:31:03
18	indemnification at the meeting?	09:31:11
19	MR. BRILLE: Same instruction. It's the same	09:31:16
20	instruction.	09:31:17
21	To the extent he's talking about it with his	09:31:19
22	lawyers	09:31:20
23	MR. VERHOEVEN: Do you want to confer with him?	09:31:23
24	I'll go off the record if you want to.	09:31:25
25	MR. FLUMENBAUM: He's not talking about	09:31:26
		Page 49

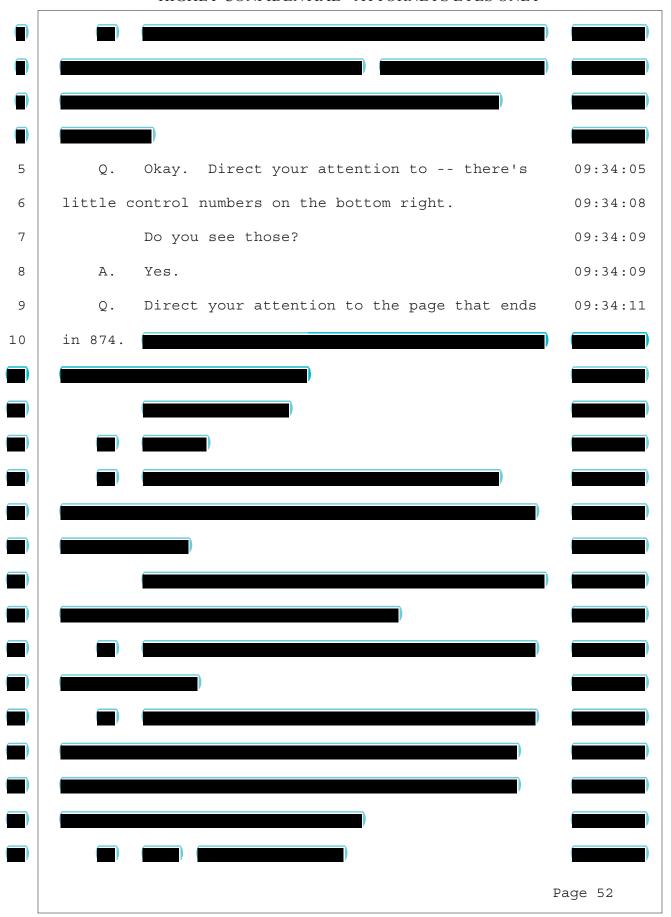
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 51 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1	communications with lawyers or not.	09:31:28
2	MR. BRILLE: I don't know if he is or not. If	09:31:30
3	he's	
4	MR. VERHOEVEN: Let's go off the record.	09:31:31
5	MR. FLUMENBAUM: There's no reason to go off the	09:31:33
6	record.	09:31:33
7	MR. BRILLE: I'm going to instruct. The	09:31:35
8	instruction stands.	09:31:39
9	MR. FLUMENBAUM: To the extent that you recall	09:31:44
10	saying something to the board as a whole which is not	09:31:47
11	based on conversations with counsel, you can answer	09:31:50
12	that question. I don't believe that	09:31:53
13	MR. BRILLE: If it's not based I'm still	09:31:55
14	concerned about the disclosure of the privileged	09:31:58
15	discussions in this context.	09:31:59
16	MR. FLUMENBAUM: I've already said that we're	09:32:01
17	going to follow your instruction on that.	09:32:04
18	MR. BRILLE: Yeah, the whole in this case, the	09:32:06
19	whole substance of the disclosure report, privilege	09:32:09
20	has been asserted. We're going to maintain that	09:32:11
21	privilege. I'm instructing the witness not to answer	09:32:13
22	the question.	09:32:14
23	MR. BOOCK: We join in all of that.	09:32:19
24	MR. VERHOEVEN: So you will instruct on any	09:32:20
25	question I ask this witness about going forward	09:32:24
	 	age 50

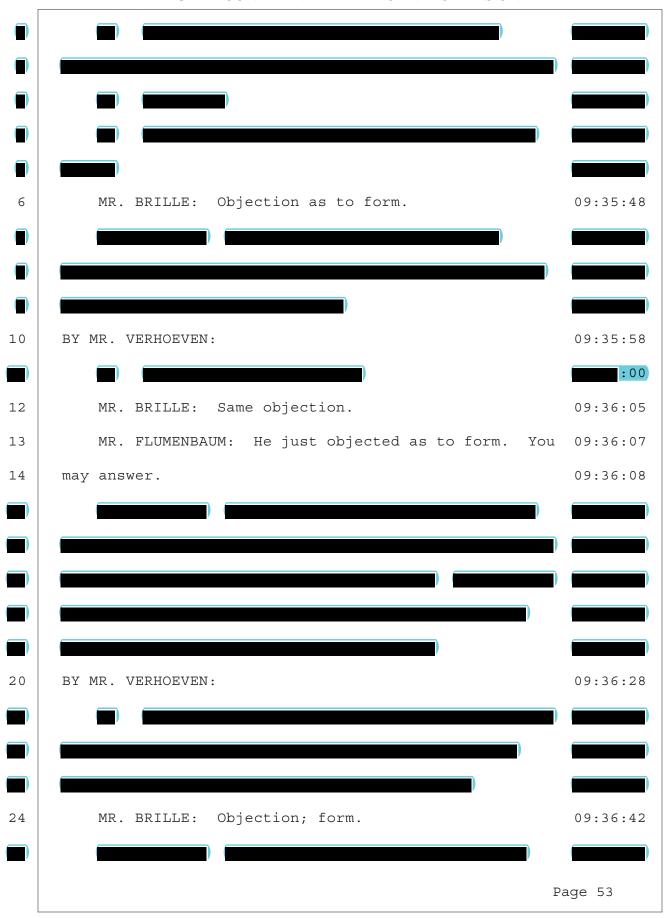
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 52 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1	about this bullet in row that says, and column	09:32:30
2	that says,	
		09:32:35
4	MR. BRILLE: I will instruct based on the specific	09:32:38
5	questions you ask, Charlie. And I don't need your	09:32:43
6	colloquy on the record.	09:32:45
7	BY MR. VERHOEVEN:	09:32:45
8	Q. What did you say about the indemnification?	09:32:47
9	MR. BRILLE: Same instructions.	09:32:48
10	BY MR. VERHOEVEN:	
11	Q. Do you recall anyone you already said	09:32:53
12	that.	09:32:53
	P	age 51

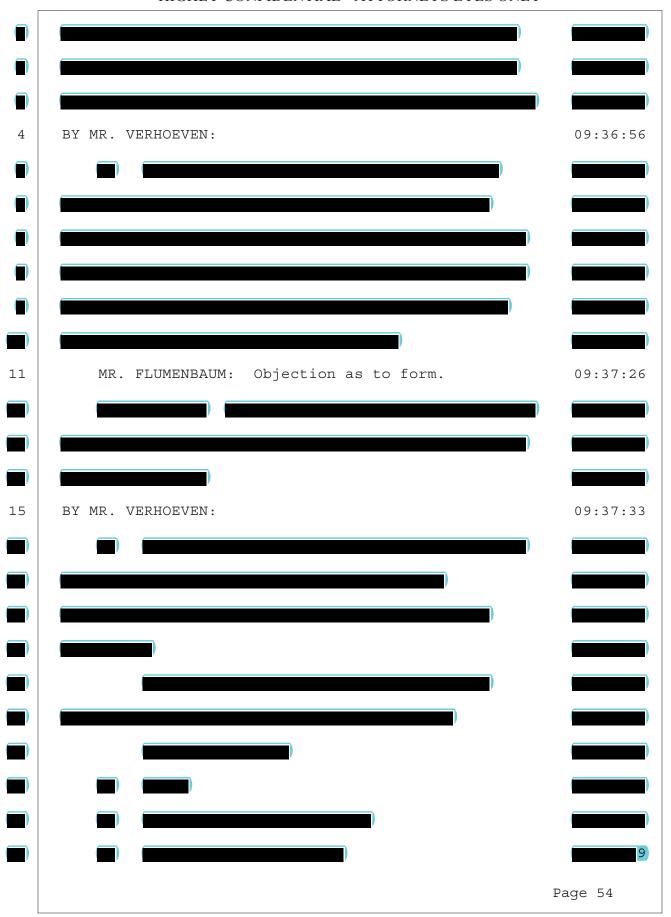
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 53 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



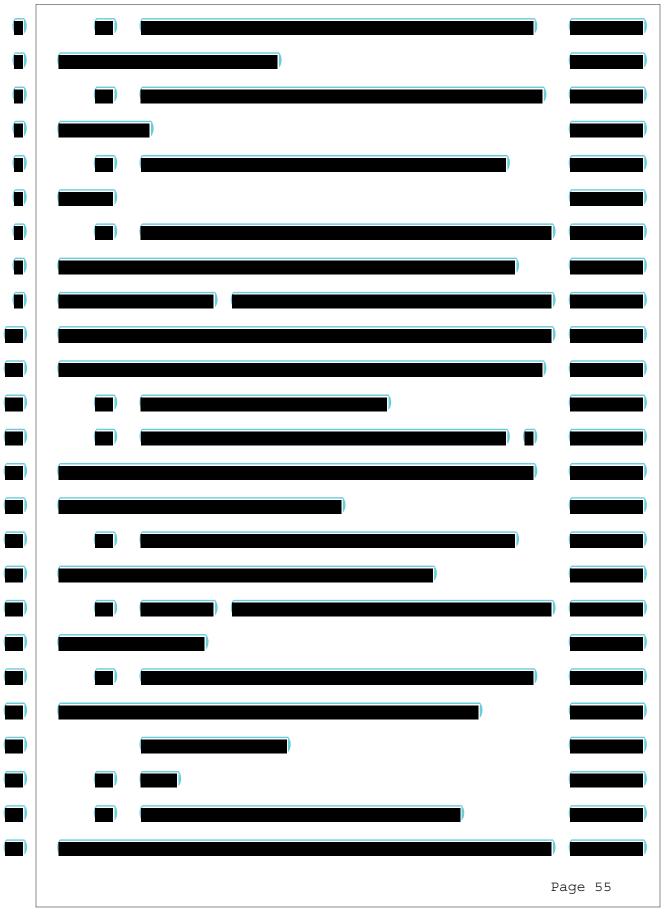
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 54 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



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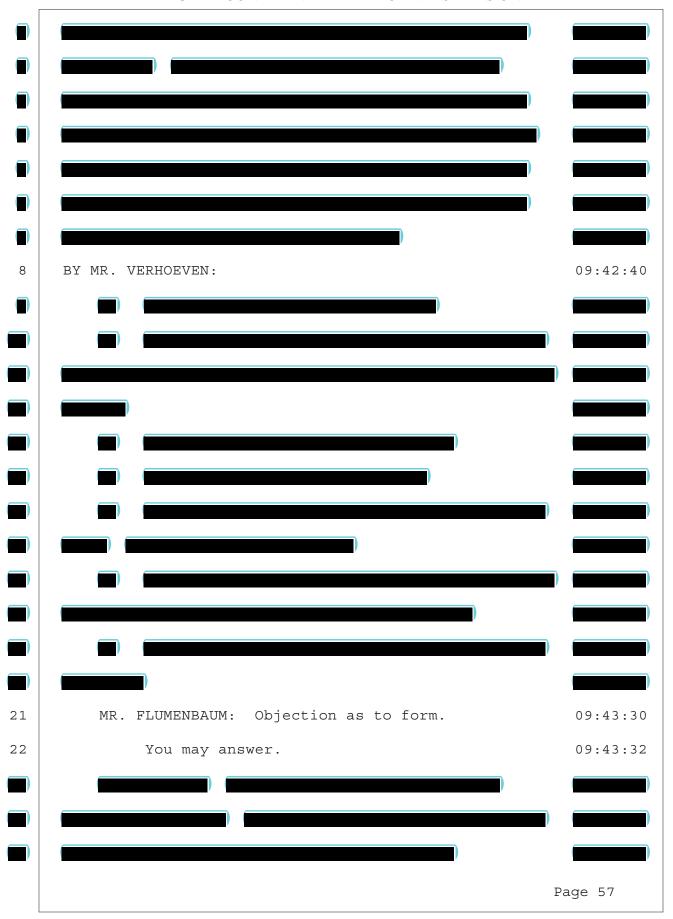
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 56 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 57 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



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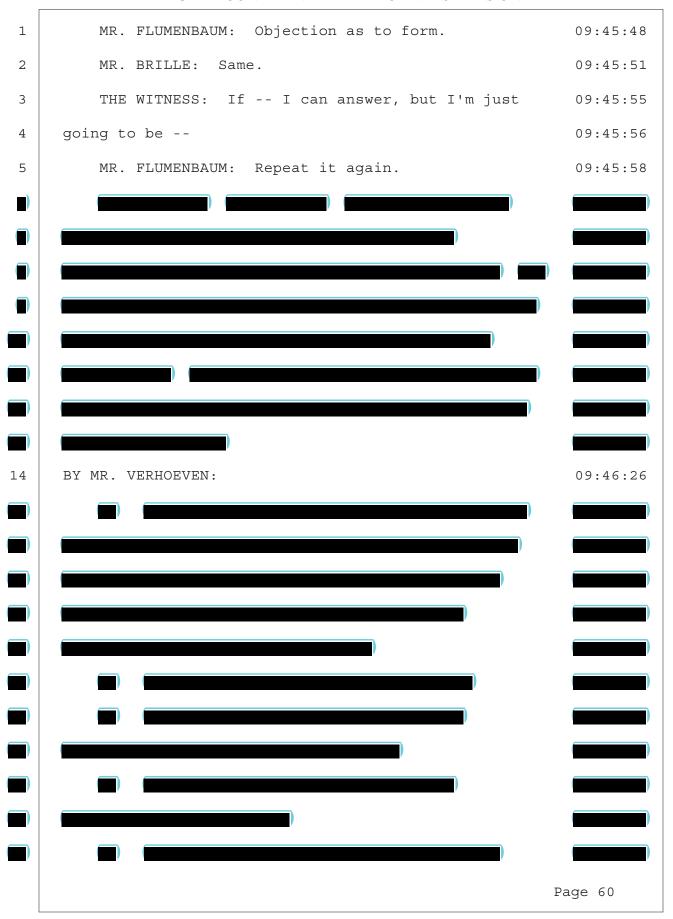
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 59 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

5	BY MR. VERHOEVEN:	
6	Q. I'm just asking	09:43:57
7	MR. FLUMENBAUM: You're interrupting. I don't	09:43:58
8	believe Judge Alsup would approve of that.	09:44:08
9	Finish your answer, please.	
12	BY MR. VERHOEVEN:	09:44:11
15	MR. FLUMENBAUM: Asked and answered.	09:44:15
22	BY MR. VERHOEVEN:	09:44:34
		Page 58

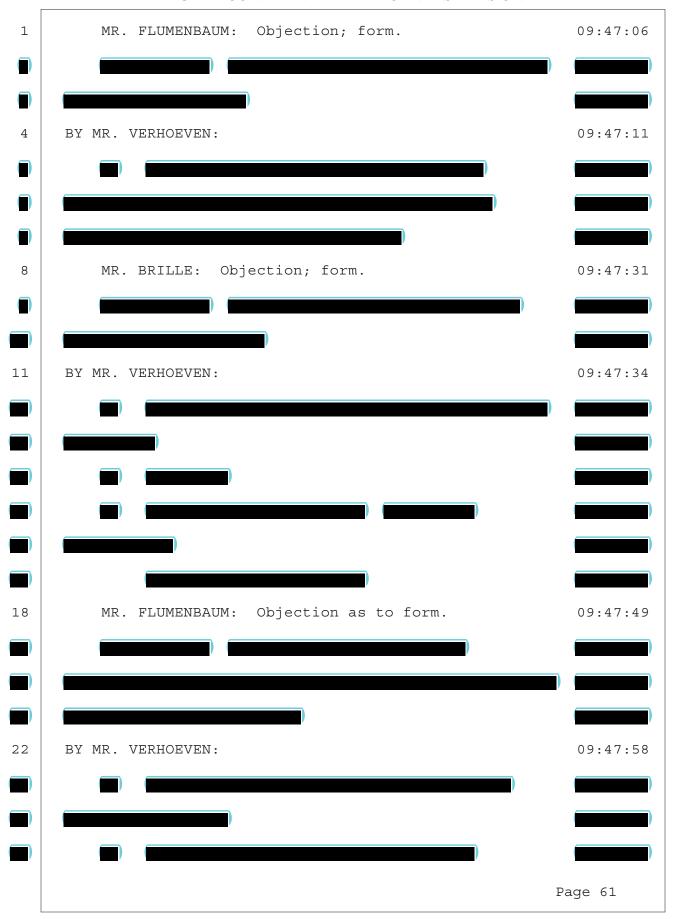
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 60 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

		52
2	MR. FLUMENBAUM: Objection as to form.	09:44:56
9	BY MR. VERHOEVEN:	09:45:14
18	Q. On its face, that doesn't make sense, does	09:45:40
19	it?	09:45:40
20	MR. FLUMENBAUM: Objection as to form.	09:45:41
21	MR. BRILLE: Yeah.	09:45:42
22	MR. FLUMENBAUM: Please reword that question.	09:45:44
23	BY MR. VERHOEVEN:	09:45:44
24	Q. On its face, that doesn't make sense, does	09:45:47
25	it?	09:45:47
		Page 59

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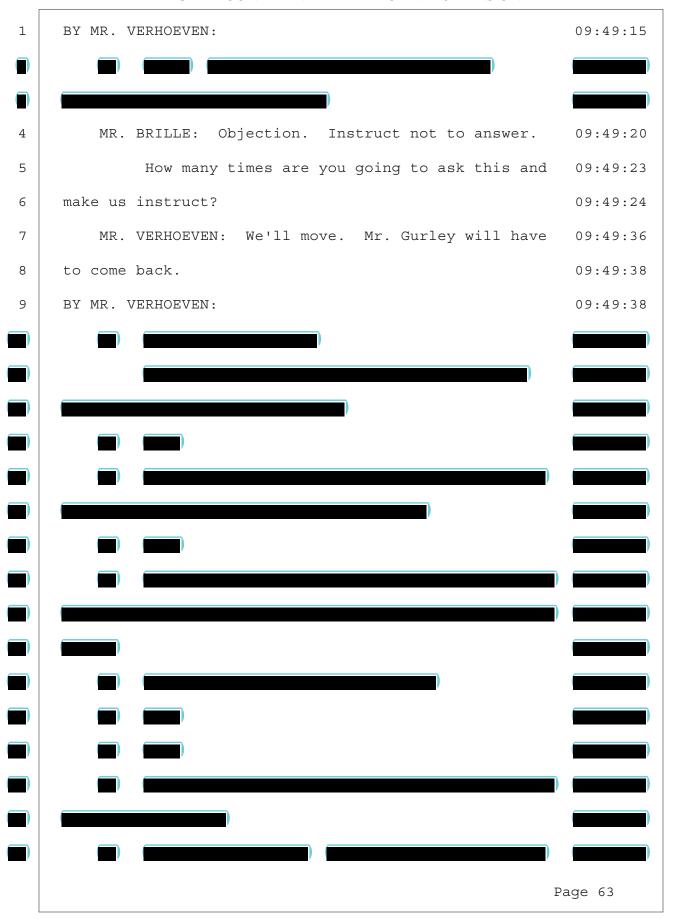
### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 62 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



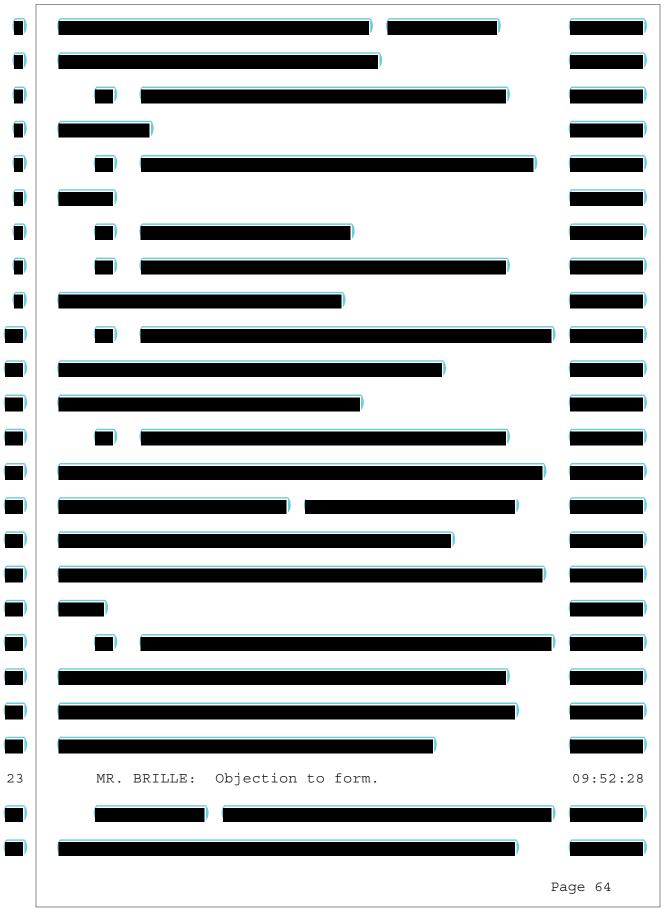
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 63 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. BRILLE: Let me just interject here.	09:48
Mr. Gurley, in answering that question	n, I 09:48
would ask you not to disclose the content or the	ne 09:48
substance of the due diligence, the results of	it or 09:48
anything else. I will instruct you not to answ	ver 09:48
that.	09:48
MR. FLUMENBAUM: If you can answer I thi	ink 09:48
you've already said	09:48
BY MR. VERHOEVEN:	09:48
BY MR. VERHOEVEN:  MR. FLUMENBAUM: Objection; form.	
	09:48

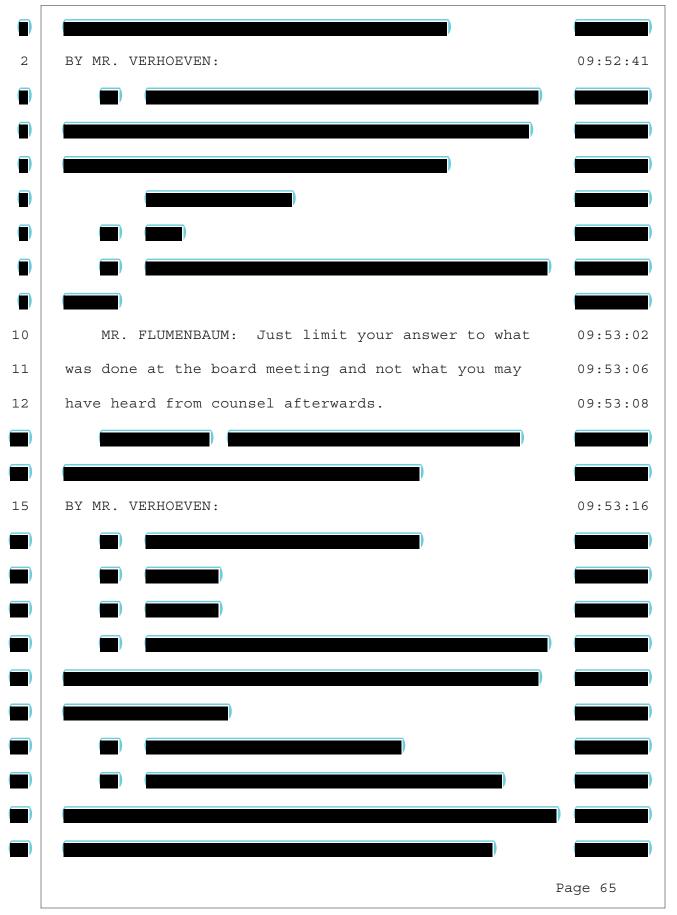
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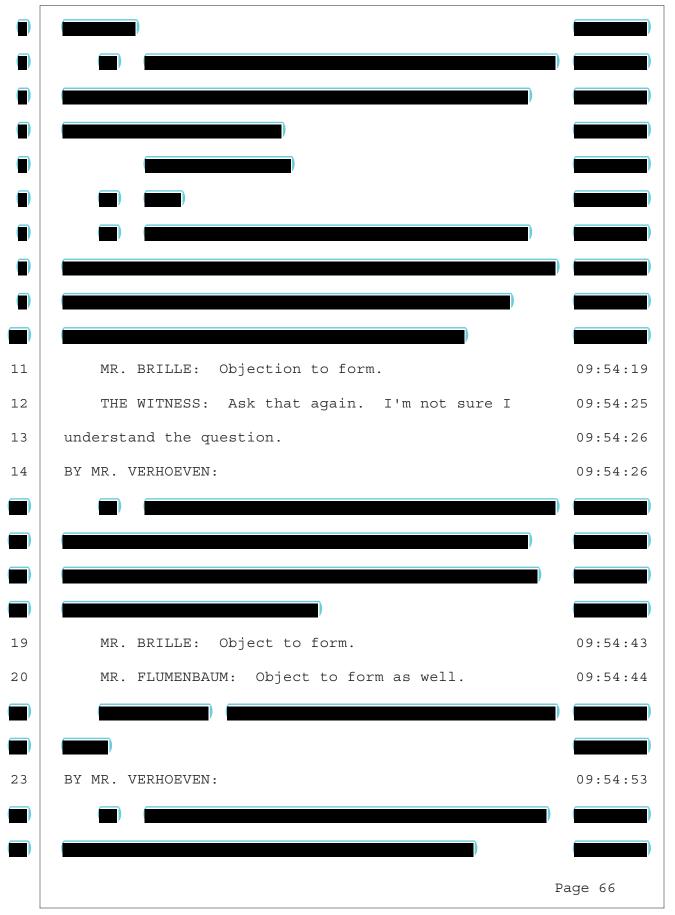
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 65 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 66 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



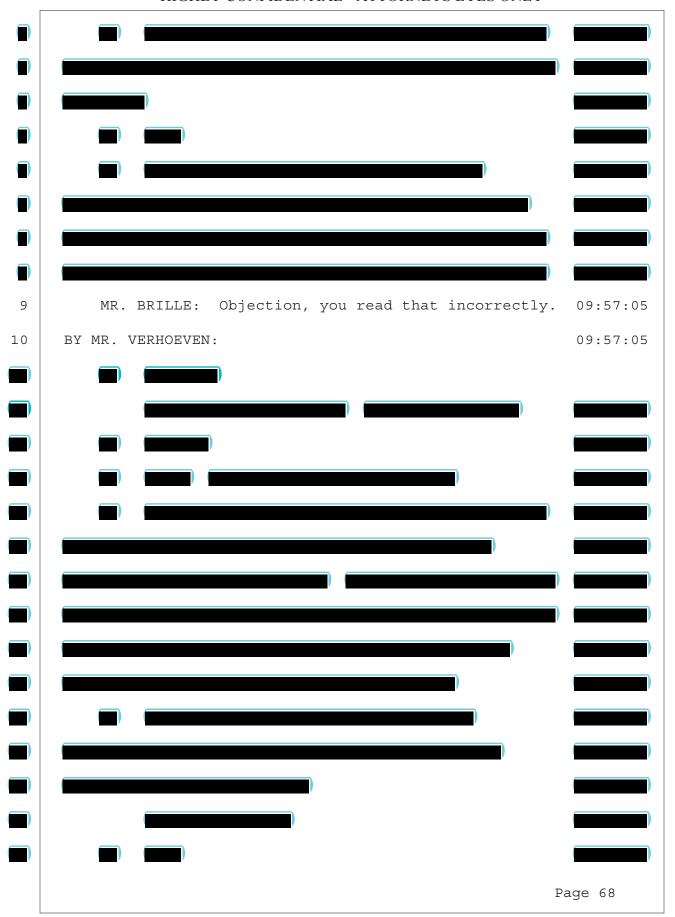
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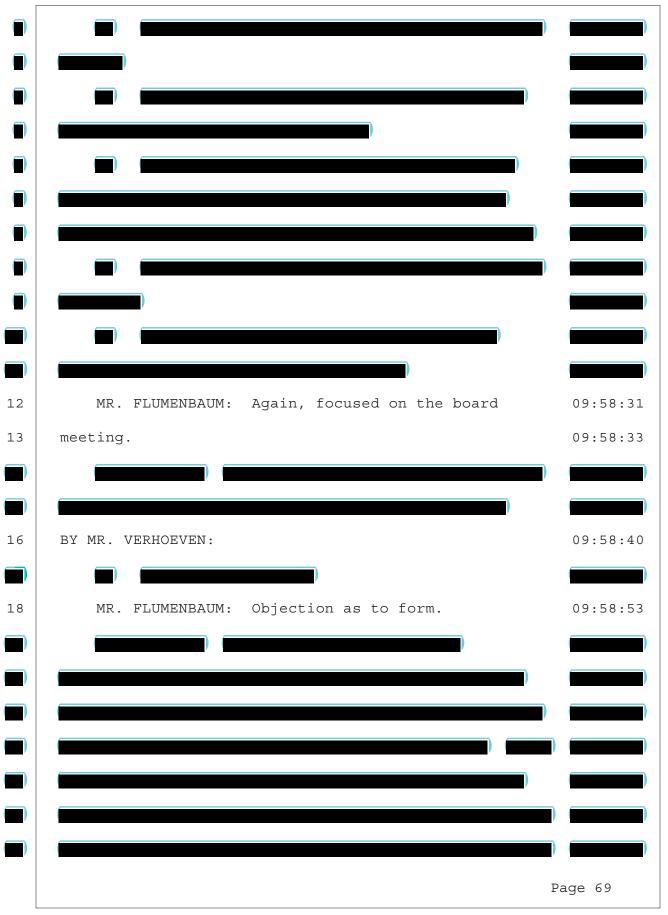
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 68 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

12	MR. BRILLE: Object to form.	09:55:34
13	MR. FLUMENBAUM: Object to form.	09:55:38
14	MR. VERHOEVEN: You can only we've already	09:55:40
15	agreed	09:55:41
16	MR. FLUMENBAUM: We were talking at the same time.	09:55:43
17	MR. BRILLE: We're trying our best.	09:55:45
18	THE WITNESS: Yeah, I'm not sure of the exact	09:55:49
19	wordsmith I'm not sure what you're trying to get at	09:55:52
20	that I'm not answering, but I'm open to try it again.	09:55:57
21	MR. FLUMENBAUM: Can I suggest something to you,	09:56:02
22	Mr	09:56:02
23	MR. VERHOEVEN: Let's just move on.	09:56:04
24	MR. FLUMENBAUM: Okay.	09:56:04
25	BY MR. VERHOEVEN:	09:56:04
	P	age 67

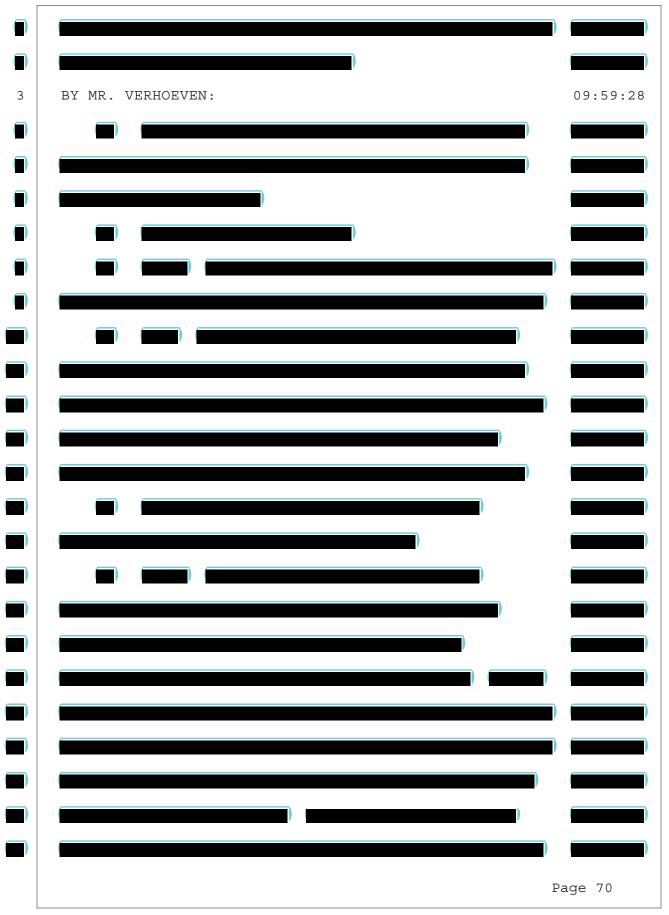
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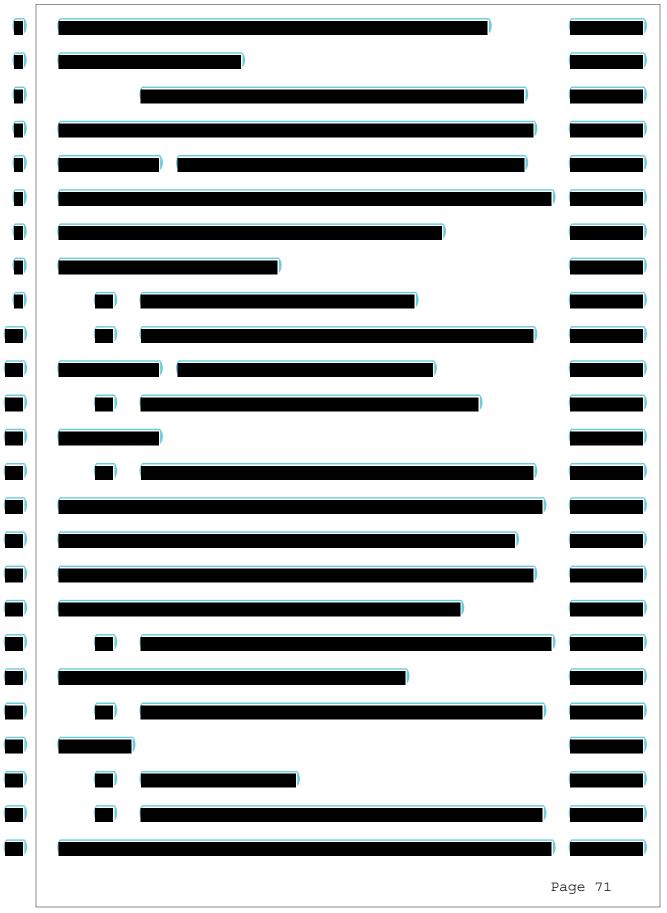
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 70 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



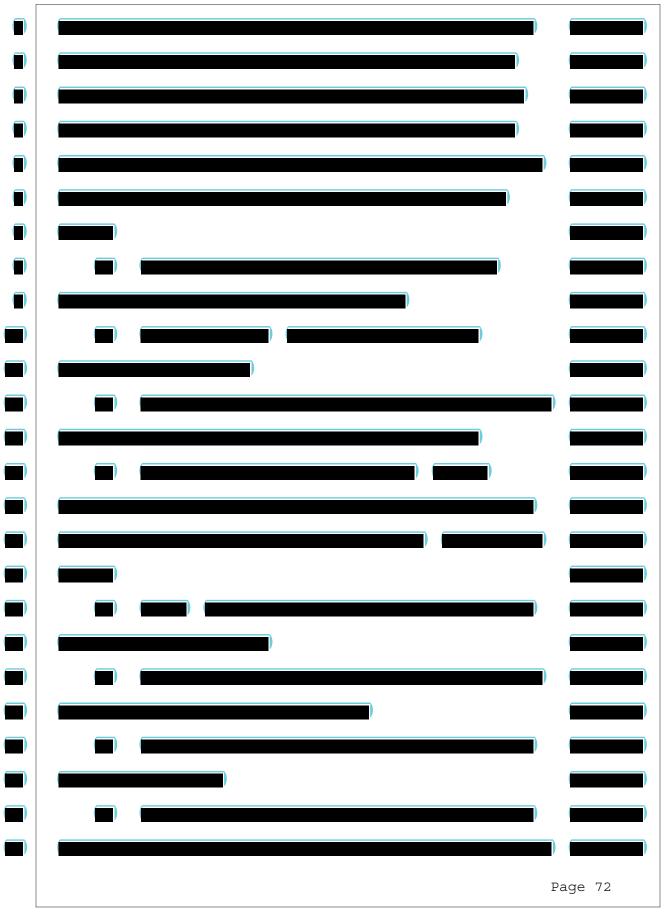
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### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 73 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 74 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

15	MR. VERHOEVEN: I'm going to mark as Exhibit 911	10:06:02
16	some highly redacted minutes of special meeting of	10:06:06
17	board of directors, Uber Technologies, Inc., dated	10:06:11
18	April 11th, 2016.	10:06:13
19	(Plaintiff's Exhibit 911 was marked.)	10:06:23
20	MR. BOOCK: Counsel, during a break during a	10:06:29
21	break, could you have a copy for Otto Trucking made of	10:06:33
22	the prior exhibit? You're not passing any exhibits	10:06:38
23	down.	10:06:38
24	MR. VERHOEVEN: I'm sorry. I didn't know there	10:06:39
25	were going to be however many people are here. This	10:06:39
	Pa	age 73
		J

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1	is MoFo's offices. I think maybe they could make a	10:06:44
2	copy for you.	10:06:46
3	BY MR. VERHOEVEN:	10:06:46
4	Q. Do you recognize this document?	10:06:49
5	First of all, I'll represent to you that	10:06:52
6	these big blank spaces that say "redacted" were	10:06:57
7	blocked out by counsel for Uber	10:07:01
8	A. Okay.	10:07:03
9	Q not by us.	10:07:05
10	A. Okay. Thank you.	10:07:07
11	Q. So do you recognize this document?	10:07:09
12	A. Yes.	10:07:10
13	Q. What is it?	10:07:11
14	A. It's minutes for the board meeting that we	10:07:15
15	just discussed.	10:07:16
16	MR. VERHOEVEN: All right. That's all I have on	10:07:35
17	that.	10:07:35
18	How long have we been going? Does anyone	10:07:42
19	need a break?	10:07:43
20	MR. FLUMENBAUM: Do you want to take a short	10:07:45
21	break? We can take a short break.	10:07:47
22	MR. VERHOEVEN: I'm switching subjects.	10:07:49
23	MR. FLUMENBAUM: Let's take a five-minute break.	10:07:53
24	THE VIDEOGRAPHER: This marks the end of DVD No. 1	10:07:56
25	in the deposition of William Gurley. We're off the	10:07:59
	Pa	age 74

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1	record at 10:07 a.m.	10:08:04
2	(Recess taken.)	10:08:04
3	THE VIDEOGRAPHER: Back on the record. This is	10:21:54
4	the beginning of DVD No. 2, and the time is 10:21 a.m	. 10:21:59
5	BY MR. VERHOEVEN:	10:21:59
6	Q. Mr. Gurley, when did you learn of the	10:22:03
7	allegations in the complaint filed by Waymo in	10:22:07
8	District Court in California?	10:22:08
9	A. I don't have any recollection of knowing	10:22:16
10	about it prior to it being a public event.	10:22:21
11	Q. So you learned about it from the press?	10:22:24
12	A. It's my recollection. There's a chance we	10:22:27
13	were notified as a board earlier, but I don't have	10:22:30
14	recollection of that.	10:22:31
15	Q. Did you know that this might happen?	10:22:35
16	A. I suppose. I mean, anybody can sue anybody,	10:22:49
17	so I guess there's a knowledge that it could happen,	10:22:52
18	but I wasn't anticipating it happening.	10:22:55
19	Q. Did you read the complaint?	10:23:03
20	A. I don't think I read the detailed complaint.	10:23:07
21	Q. Did you learn what the allegations were?	10:23:10
22	MR. FLUMENBAUM: Objection.	10:23:11
23	And if you learned it from talking to	10:23:14
24	counsel	10:23:16
25	THE WITNESS: Right.	10:23:18
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1	MR. FLUMENBAUM: just say that you can't answer	10:23:20
2	that question.	10:23:21
3	MR. VERHOEVEN: Can we have a yes or no and then	10:23:23
4	he can answer if he learned it from counsel, so I know	10:23:26
5	if he learned about it in the first place?	10:23:29
6	MR. BRILLE: Yes.	10:23:31
7	BY MR. VERHOEVEN:	10:23:31
8	Q. Did you learn about the allegations of the	10:23:34
9	complaint?	10:23:35
10	A. Yes.	10:23:35
11	Q. And when was that?	10:23:36
12	A. To the best of my recollection, around the	10:23:39
13	time that it was filed and went public.	10:23:42
14	Q. And what was your understanding of those	10:23:44
15	allegations?	10:23:45
16	MR. FLUMENBAUM: Do you have any understanding	10:23:46
17	other than through counsel?	10:23:47
18	THE WITNESS: From what I've read in the press.	10:23:50
19	MR. FLUMENBAUM: You want him to answer based on	10:23:55
20	his knowledge through the press?	10:23:57
21	MR. VERHOEVEN: I want him to answer the question,	10:24:00
22	if he can.	10:24:01
23	THE WITNESS: Based on my knowledge from reading	10:24:02
24	articles in the press, there were claims of trade	10:24:07
25	secret theft and solicitation of employees and	10:24:14
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1	specific accusations related to the downloading of the	10.24.20
2	14,000 or so files.	10:24:23
3	BY MR. VERHOEVEN:	10:24:23
4	Q. Did you speak with anyone at Uber about the	10:24:27
5	veracity of that allegation about the 14,000 files	10:24:30
6	being downloaded?	10:24:32
7	MR. FLUMENBAUM: Can he answer yes?	10:24:35
8	MR. BRILLE: He can answer yes, and then we'll	10:24:37
9	take it a step at a time. Or no, as the case may be.	10:24:45
10	THE WITNESS: When the company the size of Google	10:24:49
11	sues one of the companies you're on the board of, I'm	10:24:52
12	100 percent certain that discussions ensued. I don't	10:24:55
13	have specific recollection of a detailed	10:24:59
14	recollection of a specific discussion. I'm sure there	10:25:05
15	were many.	10:25:06
16	BY MR. VERHOEVEN:	10:25:06
17	Q. Did you discuss it with any nonlawyers, such	10:25:08
18	as perhaps, Mr. Kalanick?	10:25:11
19	A. I don't recall having a specific one-on-one	10:25:14
20	conversation with Travis about this topic.	10:25:20
21	Q. Do you remember any discussions you had where	10:25:22
22	there weren't lawyers in the room?	10:25:25
23	A. Not specifically.	10:25:26
24	Q. So you can't say one way or another whether	10:25:31
25	you had any conversations with	10:25:33
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1	A. I think it's highly likely. I just don't	10:25:36
2	recall the details of any specific conversation.	10:25:39
3	Q. Tell me about what you recall about these	10:25:41
4	conversations.	10:25:42
5	MR. FLUMENBAUM: Again, exclude anything that	10:25:47
6	THE WITNESS: With a lawyer.	10:25:49
7	MR. FLUMENBAUM: you had with counsel.	10:25:50
8	BY MR. VERHOEVEN:	10:25:50
9	Q. So the question is: Did you ask Travis or	10:25:54
10	anybody else at Uber about the veracity of the	10:25:58
11	allegations concerning Levandowski's downloading of	10:26:03
12	the 14,000 files?	10:26:04
13	A. There were numerous discussions that involved	10:26:07
14	company counsel, external counsel that I presume are	10:26:12
15	privileged, numerous. What I'm struggling to	10:26:16
16	recollect is if I had conversations with nonattorneys	10:26:20
17	about what you're asking, and I don't have specific	10:26:25
18	recollection.	10:26:26
19	Q. Well, did you have any conversations	10:26:31
20	A. Highly likely.	10:26:32
21	Q. Well, what do you remember saying in those	10:26:35
22	circumstances?	10:26:37
23	MR. FLUMENBAUM: Again, limit your answer to	10:26:39
24	conversations where counsel was not present, to the	10:26:42
25	extent you can remember those.	10:26:44
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1	THE WITNESS: I'd be reaching. I don't have	10:26:48
2	specific recollection of it's highly likely it	10:26:54
3	happened because it's such a critical and meaningful	10:26:57
4	event. The substantive conversations are much more	10:27:01
5	likely to have been with the attorneys because of the	10:27:04
6	nature of the event.	10:27:05
7	BY MR. VERHOEVEN:	10:27:05
8	Q. So you're saying the only conversations you	10:27:07
9	can recall are with attorneys?	10:27:09
10	A. Yes.	10:27:09
11	Q. But you would agree that the filing of the	10:27:25
12	complaint was a highly critical event; right?	10:27:35
13	A. Yes.	10:27:35
14	Q. When did you learn let me back up.	10:27:47
15	Did there come a point when you learned that	10:27:52
16	Mr. Levandowski was asserting the Fifth Amendment?	10:27:55
17	A. Yes.	10:27:55
18	Q. And when did you learn that?	10:27:59
19	A. I don't have any recollection of knowing that	10:28:07
20	ahead of it being general public knowledge.	10:28:10
21	Q. Did you learn it from the press then?	10:28:13
22	A. It's possible.	10:28:14
23	Q. What was your reaction to that?	10:28:18
24	A. It it's not a topic that I had much	10:28:28
25	familiarity with, so my reaction was to try to find	10:28:32
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1	out whether it was common or not and why it was	10:28:34
2	happening and, you know, what the company's response	10:28:39
3	should be.	10:28:40
4	Q. So you weren't concerned when you read it?	10:28:43
5	A. I didn't say that.	10:28:44
6	Q. Were you concerned when you read it?	10:28:47
7	A. I was unaware of how to react to it, and so I	10:28:53
8	sought knowledge to have a broader understanding of	10:28:56
9	it.	10:28:57
10	Q. You know generally what taking the Fifth is;	10:29:01
11	right?	10:29:01
12	A. Yeah, but I didn't have a prior knowledge as	10:29:05
13	to what it meant in this situation. But then I sought	10:29:10
14	that out.	10:29:11
15	Q. Well, you knew when you take the Fifth,	10:29:13
16	you're refusing to answer questions	10:29:15
17	A. I understand.	10:29:16
18	Q on the ground that you might incriminate	10:29:19
19	yourself; right?	10:29:21
20	A. I understand.	10:29:22
21	Q. And you knew that at the time?	10:29:23
22	A. I did. I didn't have a I didn't have a	10:29:27
23	full understanding of the how unusual I didn't	10:29:34
24	have an understanding in that context, but then I did	10:29:37
25	shortly thereafter.	10:29:38
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1	Q. And were you concerned about it?	10:29:40
2	A. Yes.	10:29:40
3	Q. Did you do anything about it?	10:29:45
4	A. I asked a lot of questions about him doing	10:29:51
5	that and what the proper response from the company	10:29:54
6	should be.	10:29:56
7	Q. And what response did you get from the	10:29:58
8	company?	10:29:59
9	MR. BRILLE: Objection.	10:29:59
10	I'm going to instruct the witness that to the	10:30:02
11	extent it would call for you to disclose	10:30:05
12	attorney-client privilege communications, that you	10:30:07
13	exclude those from your answer.	10:30:09
14	MR. BOOCK: And I would agree that Otto Trucking	10:30:09
15	joins in all of Uber and Otto's objections.	
16	MR. FLUMENBAUM: Can you answer that question	10:30:19
17	without divulging conversations that you had with	10:30:22
18	counsel for Uber?	10:30:25
19	THE WITNESS: So as I attempted to understand the	10:30:33
20	situation more broadly and talked to our own	10:30:40
21	counsel	10:30:43
22	MR. FLUMENBAUM: You can't talk about your own	10:30:45
23	counsel, conversations with your own counsel.	10:30:48
24	THE WITNESS: At any rate, I came to believe that	10:30:51
25	the appropriate action in a situation like this would	10:30:54
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1	be for the company to terminate based on taking the	10:30:57
2	Fifth.	10:30:59
3	BY MR. VERHOEVEN:	10:30:59
4	Q. Okay. And what was the time what was the	10:31:03
5	span of time from when you first read about it in the	10:31:08
6	press to when you came to that conclusion?	10:31:10
7	A. To the best of my recollection, a couple	10:31:17
8	weeks.	10:31:18
9	Q. And did you express that view?	10:31:26
10	A. Yes.	10:31:26
11	Q. To whom?	10:31:30
12	A. There were some conversations with members of	10:31:33
13	the executive team. I don't remember exactly who or	10:31:36
14	when. There's some conversations with legal that are	10:31:40
15	privileged. But I also expressed it to the board.	10:31:45
16	Q. What do you remember about any discussions	10:31:50
17	with the executive team on this subject?	10:31:53
18	A. There were members of the executive team that	10:32:02
19	also agreed that termination was the right course of	10:32:06
20	action.	10:32:06
21	Q. And who were those members?	10:32:08
22	A. I don't recall specifically. I talked to a	10:32:11
23	lot of executive team members.	10:32:13
24	Q. Were there members who did not think that	10:32:16
25	that was the right course of action?	10:32:18
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1	A. I don't recall any.	10:32:33
2	Q. Who comprised the executive team at that	10:32:38
3	time?	10:32:38
4	A. I don't know if I'll get them all.	
	I'm	10:33:26
9	probably leaving somebody out.	10:33:28
10	Q. Was Travis on the team?	10:33:30
11	A. Yeah, I mean, he's CEO, so, yeah.	10:33:37
12	may have left by then.	10:33:39
13	Q. Did Mr. Kalanick agree, when you expressed	10:33:45
14	this to the executive team, that Mr. Levandowski	10:33:48
15	should be terminated?	10:33:52
16	A. I don't recall if I had a direct discussion	10:33:55
17	with him, although probably at a board level, it was	10:33:58
18	the general understanding of the team that he did not	10:34:04
19	want to terminate Anthony.	10:34:06
20	Q. Do you recall what the reasons that he	10:34:17
21	stated for why he did not	10:34:19
22	A. Yeah, the statement I remember is that he	10:34:21
23	didn't do anything wrong, so why should we terminate	10:34:24
24	him?	10:34:25
25	Q. And what was said in response to that? And	10:34:32
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1	if you can recall, who said it? For example, did	10:34:42
2	someone say, then why is he taking the Fifth?	10:34:45
3	MR. BRILLE: Object to form.	10:34:47
4	THE WITNESS: I can certainly say that my opinion	10:34:53
5	at that moment in time was that his taking the Fifth	10:34:56
6	should result in his termination, based on my best	10:35:02
7	knowledge of how that situation should be dealt with.	10:35:06
8	BY MR. VERHOEVEN:	10:35:06
9	Q. And did you referenced conversations with	10:35:10
10	the board on this subject?	10:35:12
11	A. Yes.	10:35:12
12	Q. How many such conversations were there?	10:35:16
13	A. I can't remember specifically, but my general	10:35:21
14	recollection is that it spanned multiple board	10:35:24
15	meetings.	10:35:31
16	Q. And your position to the board was that he	10:35:34
17	should be terminated?	10:35:35
18	A. Yes.	10:35:35
19	Q. And you made that clear on the first of these	10:35:41
20	multiple board meetings?	10:35:43
21	A. Once I'd gotten up to speed and had proper	10:35:48
22	knowledge of what I thought was the best to do,	10:35:55
23	which as I said earlier, there was a time window	10:35:58
24	where that happened. So it wasn't my voicing of	10:36:06
25	this opinion wasn't immediate, like right after he	10:36:09
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1	pled the Fifth. It took me a while to ascertain the	10:36:14
2	right answer for this situation.	10:36:16
3	Q. Did you explain to the board why you thought	10:36:18
4	he should be terminated?	10:36:19
5	A. Yes.	10:36:19
6	Q. What did you say?	10:36:21
7	A. I said, based on all the research I've done,	10:36:25
8	that that's the appropriate action for a company at	10:36:29
9	this moment in time, when someone pleads the Fifth.	10:36:32
10	Q. And when you say "research" that you've done,	10:36:34
11	can you summarize what you did?	10:36:36
12	A. Well, I want to be careful. Some of those	10:36:38
13	conversations were me reaching out to people who were	10:36:41
14	experienced on those matters, which would inherently	10:36:45
15	go to lawyers.	10:36:46
16	Q. Can you identify the lawyers that you	10:36:48
17	consulted?	10:36:49
18	A. Certainly Steve Spurlock, who is a lawyer	10:36:54
19	that works for Benchmark.	10:36:57
20	Q. Any outside counsel?	10:37:01
21	A. He may have reached out. I don't know	10:37:06
22	specifically who he talked to.	10:37:09
23	MR. VERHOEVEN: And I assume, Counsel, you'll	10:37:12
24	instruct if I ask about the substance of his	10:37:15
25	conversation?	10:37:16
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-1	MD DI IMPADATA G	10 20 10
1	MR. FLUMENBAUM: Correct.	10:37:18
2	BY MR. VERHOEVEN:	10:37:18
3	Q. Any other things you did to research besides	10:37:25
4	talk to Steve Spurlock?	10:37:33
5	A. Not that I have specific recollection of, but	10:37:35
6	I'm sure I I did as much work as I did to come up	10:37:42
7	to that point of view. I just don't remember exactly	10:37:45
8	who I talked to.	10:37:46
9	Q. Did you read the complaint?	10:37:48
10	A. I don't have I don't have memory of	10:37:51
11	reading the exact complaint. I may have, but I don't	10:37:55
12	remember.	10:37:55
13	Q. Did you read the motion for preliminary	10:37:57
14	injunction?	10:37:58
15	A. It's possible, but I don't recall precisely.	10:38:03
16	Q. Do you remember reading any legal pleadings	10:38:07
17	that were filed in around the time you were doing your	10:38:10
18	research?	10:38:11
19	A. I certainly made myself aware of the issues.	10:38:23
20	I just don't know if it was precisely by reading the	10:38:27
21	complaint.	10:38:28
22	Q. Did you have an understanding as to why, when	10:38:31
23	someone asserts the Fifth Amendment, you thought they	10:38:34
24	should be terminated?	10:38:36
25	MR. FLUMENBAUM: Objection as to form.	10:38:42
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1	BY MR. VERHOEVEN:	10:38:42
2	Q. Let me withdraw that.	10:38:44
3	Did you have an understanding as to the	10:38:45
4	reasons why, in these circumstances here, when	10:38:48
5	Mr. Levandowski asserted the Fifth Amendment, that he	10:38:52
6	should be terminated?	10:38:53
7	A. Yeah, as I understood a couple of things,	10:38:56
8	one, that that was generally considered to be best	10:39:00
9	practice and so that's a reason in and of itself. I	10:39:04
10	believe that he is required to be cooperative as part	10:39:09
11	of indemnity claims and that kind of thing, so this	10:39:16
12	is, by definition, being noncooperative.	10:39:19
13	And there was also as I'm sure you're	10:39:34
14	aware, there were assertions by the judge in the case	10:39:37
15	that suggested that he had a strong bias for that	10:39:42
16	action.	10:39:43
17	Q. For what action?	10:39:44
18	A. For terminating. That's my interpretation of	10:39:48
19	it.	10:40:04
20	Q. Did there come a time when you learned that	10:40:06
21	Mr. Levandowski did, indeed, download the 14,000	10:40:11
22	files?	10:40:12
23	MR. BRILLE: Object to the form.	10:40:23
24	THE WITNESS: I don't have any knowledge of that	10:40:25
25	that wouldn't qualify for privileged conversation.	10:40:30
	Pa	age 87

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1	BY MR. VERHOEVEN:	10:40:30
2	Q. Well, yes or no?	10:40:32
3	MR. FLUMENBAUM: He's answered your question. I'm	10:40:36
4	going to tell him instruct him not to answer on the	10:40:40
5	basis of privilege.	10:40:41
6	BY MR. VERHOEVEN:	10:40:41
7	Q. You had you learned something along those	10:40:45
8	lines from counsel; is that what you're saying?	10:40:48
9	MR. FLUMENBAUM: Objection as to form. And I'm	10:40:50
10	going to instruct him not to answer that question on	10:40:53
11	privilege grounds.	10:40:55
12	MR. BRILLE: Same instruction.	10:40:58
13	MR. VERHOEVEN: Just asking him about his state of	10:41:01
14	mind.	10:41:02
15	MR. FLUMENBAUM: Well, you're not doing it	10:41:04
16	appropriately.	10:41:04
17	MR. VERHOEVEN: Okay. Tell me how to do it	10:41:06
18	appropriately.	10:41:07
19	MR. FLUMENBAUM: First of all, you don't have a	10:41:09
20	time frame. You have not excluded conversations with	10:41:12
21	counsel. You have not excluded events that have	10:41:15
22	occurred subsequent, so you know.	10:41:19
23	MR. VERHOEVEN: I asked him if there came a time	10:41:21
24	when he learned	10:41:23
25	MR. FLUMENBAUM: Ask your question.	10:41:24
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1	MR. VERHOEVEN: Okay. I'll repeat it.	10:41:26
2	BY MR. VERHOEVEN:	10:41:26
3	Q. Did there come a time, Mr. Gurley, when you	10:41:29
4	learned that Mr. Levandowski, in fact, did download	10:41:33
5	the 14,000 files?	10:41:35
6	MR. BRILLE: Mr. Gurley, in answering that	10:41:37
7	question, I'm going to instruct you not to answer the	10:41:39
8	question if the only way you can answer the question	10:41:42
9	is to divulge the content of attorney-client	10:41:46
10	communications.	10:41:47
11	THE WITNESS: Okay.	10:41:49
12	MR. FLUMENBAUM: Instruction stands.	10:41:51
13	MR. VERHOEVEN: All right. It will go on our	10:41:53
14	motion. Can I ask him what time he learned it?	10:41:57
15	MR. FLUMENBAUM: If he learned it.	10:41:59
16	BY MR. VERHOEVEN:	10:41:59
17	Q. Okay. If you learned it, can you tell me	10:42:02
18	approximately when you learned it?	10:42:04
19	MR. BRILLE: I'm going to object to the form.	10:42:07
20	Same objection I'm going to instruct. The question	10:42:10
21	is improper and seeks to elicit attorney-client	10:42:13
22	privileged discussions. The way you're phrasing it is	10:42:16
23	the way it seeks to elicit that type of information.	10:42:19
24	MR. VERHOEVEN: His counsel just suggested that.	10:42:22
25	MR. BRILLE: No, he did not.	10:42:28
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1	MR. VERHOEVEN: I thought you said that if he	10:42:29
2	learned it	10:42:30
3	MR. FLUMENBAUM: Why don't you start over and	10:42:33
4	BY MR. VERHOEVEN:	
5	Q. If you learned that Mr. Levandowski did,	10:42:37
6	indeed, download the 14,000 files, when did you learn	10:42:41
7	it?	10:42:41
8	MR. BRILLE: Object to the form of the question	10:42:43
9	instruct the witness not to answer. As phrased, it is	10:42:45
10	designed to elicit attorney-client privileged	10:42:48
11	information.	10:42:49
12	MR. FLUMENBAUM: Correct, I agree with that.	10:42:52
13	MR. VERHOEVEN: The fact of when the board learned	10:42:54
14	about something?	10:42:54
15	MR. BRILLE: As phrased, you are seeking to	10:42:58
16	MR. FLUMENBAUM: You are asking questions now	10:43:00
17	you're saying the board. That's not part of your	10:43:03
18	question.	10:43:04
19	MR. VERHOEVEN: Okay.	10:43:05
20	MR. FLUMENBAUM: Please start again.	10:43:07
21	BY MR. VERHOEVEN:	10:43:07
22	Q. Did there come a time when the board learned	10:43:10
23	that Mr. Levandowski did, in fact, download the 14,000	10:43:13
24	files?	10:43:14
25	MR. BRILLE: Mr. Gurley, I'm going to give you the	10:43:16
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1	same instruction. To the extent you can answer that	10:43:18
2	question without revealing the content of	10:43:20
3	attorney-client privileged communications, you may do	10:43:23
4	so; otherwise, I will instruct you not to answer.	10:43:26
5	BY MR. VERHOEVEN:	10:43:26
6	Q. It's a yes-or-no question?	10:43:31
7	MR. FLUMENBAUM: He can't answer that question as	10:43:32
8	worded, based on the instruction from Uber's counsel.	10:43:37
9	MR. VERHOEVEN: Are you instructing him now?	10:43:39
10	MR. FLUMENBAUM: Correct.	10:43:40
11	MR. VERHOEVEN: Even if there's not he learned	10:43:42
12	it through a non-attorney communication?	10:43:44
13	MR. BRILLE: That wasn't the instruction.	10:43:46
14	MR. VERHOEVEN: So that's what I understood the	10:43:48
15	instruction to be, that he could answer if	10:43:51
16	MR. FLUMENBAUM: From a non from	10:43:56
17	MR. VERHOEVEN: Let me ask the question again.	10:43:58
18	BY MR. VERHOEVEN:	10:43:58
19	Q. Did there come a time when the board learned	10:44:01
20	in a board meeting that Mr. Levandowski, in fact, did	10:44:05
21	download the 14,000 files?	10:44:09
22	MR. BRILLE: Same instruction. To the extent that	10:44:12
23	you can answer that question without revealing the	10:44:14
24	content of attorney-client privilege	10:44:16
25	THE WITNESS: I'm not aware of a non-privileged	10:44:19
	Po	age 91

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1	discussion where the board shared that knowledge.	10:44:24
2	BY MR. VERHOEVEN:	10:44:24
3	Q. Was there a privileged instance that you	10:44:26
4	can't talk about that exists that's responsive to my	10:44:32
5	question; yes or no?	10:44:34
6	MR. BRILLE: As phrased, it calls for the	10:44:35
7	disclosure of attorney-client privileged information.	10:44:37
8	I instruct you not to answer at all.	10:44:40
9	THE WITNESS: Understood.	10:44:41
10	MR. VERHOEVEN: I'll move on. We've got a good	10:44:45
11	enough record for our motion.	10:44:46
12	BY MR. VERHOEVEN:	10:44:46
13	Q. Let's go back to discussions that we were	10:44:52
14	talking about at the board meeting about the Fifth	10:44:56
15	Amendment.	10:44:56
16	Do you remember that?	10:44:58
17	A. Um-hum. Yes.	10:44:59
18	Q. You had described for me the statements that	10:45:06
19	you made generally at that meeting, or at least that	10:45:09
20	you can recall.	10:45:10
21	A. Right.	10:45:11
22	Q. What did Mr. Kalanick say in response at that	10:45:15
23	meeting?	10:45:17
24	A. To the best of my knowledge, what he said, as	10:45:19
25	I've already stated to you, is that he felt that	10:45:23
	Pa	age 92

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1	Anthony hadn't done anything wrong and, therefore, it	10:45:27
2	would be unfair to terminate him for pleading the	10:45:30
3	Fifth.	10:45:31
4	Q. Okay. That was the answer you gave when I	10:45:34
5	asked about conversations with the executive team. So	10:45:36
6	he said the same thing at the board meetings?	10:45:39
7	A. Yes.	10:45:39
8	Q. And did anyone at the board meeting ask the	10:45:43
9	question, then why is he asserting the Fifth Amendment	10:45:46
10	if he didn't do anything wrong?	10:45:49
11	A. I don't know if that question was	10:45:56
12	specifically asked, but I wouldn't be surprised if it	10:45:59
13	was.	10:45:59
14	Q. What discussion do you remember concerning	10:46:04
15	this statement that Mr. Kalanick said about him not	10:46:08
16	doing anything wrong?	10:46:10
17	A. Nothing other than the simple statement.	10:46:21
18	Q. But what do you remember, how the board	10:46:22
19	reacted? Did they say he said he didn't do	10:46:26
20	anything wrong. What did the board say in response to	10:46:29
21	that?	10:46:30
22	A. Just because I had better recollection	10:46:33
23	because it was on my mind at the time, my belief was	10:46:39
24	that if he felt compelled to do this, that the board	10:46:43
25	should or the company should take action against	10:46:48
	Pa	age 93

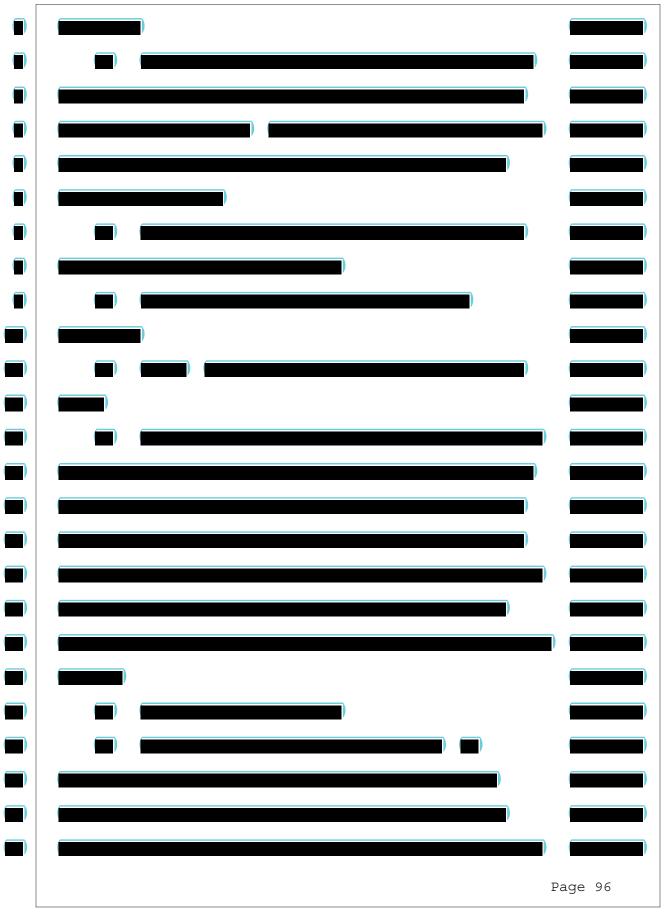
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1	him and terminate, for the reasons that I've	10:46:50
2	discussed.	10:46:51
3	Q. Right.	10:46:51
4	So but I'm asking you specifically, at the	10:46:54
5	board meeting, Kalanick repeated his view	10:46:59
6	A. Right.	
7	Q that Levandowski didn't do anything	10:47:02
8	wrong	10:47:03
9	A. I think I understand your question?	
10	I don't remember if there were specific	10:47:06
11	conversations that said, well, if he didn't do	10:47:08
12	anything wrong, why would he plead the Fifth? I don't	10:47:10
13	remember if that happened. It might have.	10:47:13
14	Q. Well, do you remember was there response	10:47:15
15	to Mr. Kalanick at the meeting, after he made that	10:47:19
16	statement, just generally? There was a discussion;	10:47:25
17	right?	10:47:26
18	A. Yeah, I think there was a discussion and I	10:47:28
19	think and I don't recall exactly who chimed in, but	10:47:32
20	there was others, like me, that felt that taking the	10:47:38
21	Fifth should be dealt with.	10:47:40
22	Q. And who were those people?	10:47:42
23	A. I just said I don't recall exactly who was on	10:47:45
24	that point of view.	10:47:46
25	Q. Do you remember anyone on the board that you	10:47:49
	Pa	age 94

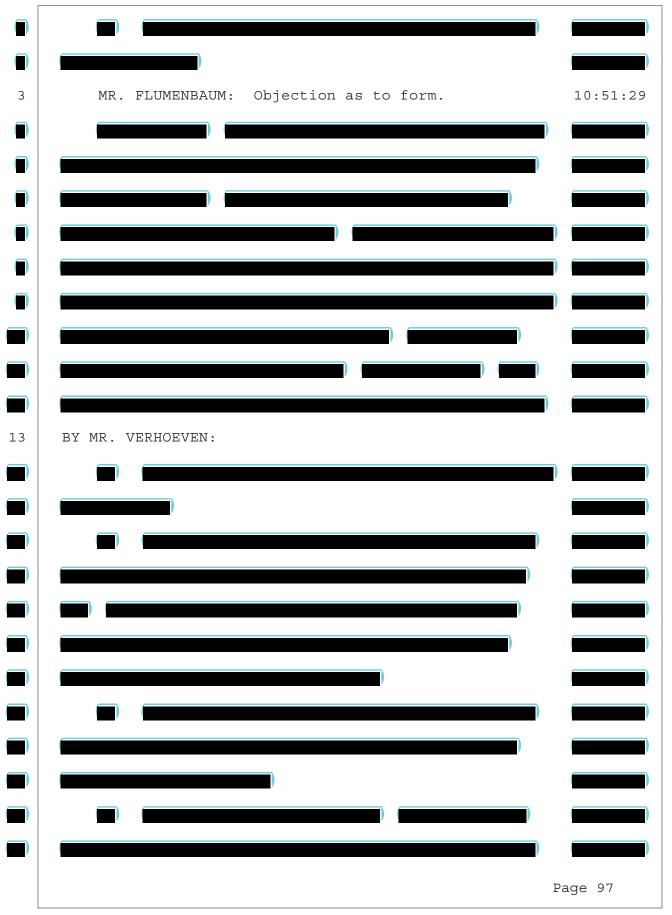
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1	can identify?	10:47:50
2	A. I'd be speculating.	10:47:56
3	Q. So as a result as a result of the first	10:47:59
4	meeting of the board on this subject, was anything	10:48:05
5	done to Mr. Levandowski?	10:48:09
6	A. Not immediately.	10:48:12
7	Q. Do you remember anything else that was	10:48:20
8	discussed about the Waymo case or Mr. Levandowski	10:48:24
9	during this initial meeting?	10:48:43
10	A. There were generic discussions about how we	10:48:46
11	would respond and who would be representing that kind	10:48:50
12	of thing. There were other discussions that were	10:48:53
13	privileged with those representatives.	10:48:56
14	Q. Anything that wasn't the subject of attorney	10:49:00
15	advice?	10:49:01
		Page 95

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13	MR. FLUMENBAUM: Objection as to form.	10:53:35
16	MR. VERHOEVEN: Do you have the board	10:53:59
17	BY MR. VERHOEVEN:	
18	Q. Just for authentication purposes, I'm going	10:54:35
19	to show you a document marked as 912.	10:54:38
20	(Plaintiff's Exhibit 912 was marked.)	10:54:50
21	MR. FLUMENBAUM: Can I have a copy?	10:54:51
22	MR. VERHOEVEN: Yes.	10:54:52
23	BY MR. VERHOEVEN:	10:54:52
24	Q. Again, the heavy redactions on this document	10:54:59
25	that block out the document were created by counsel	10:55:07
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1	for Uber, so I apologize for that.	10:55:12
2	Can you identify this document, to the extent	10:55:21
3	that it's disclosed?	10:55:22
4	A. It appears to be the minutes from an April	10:55:27
5	10th board meeting.	10:55:28
6	Q. Would you have to the extent you can	10:55:36
7	recall we're talking about this whole conversation	10:55:40
8	about the Fifth Amendment and whatnot. Would that	10:55:44
9	have been started at least by this April 10th, 2017	10:55:51
10	meeting?	10:55:52
11	A. I don't know. I don't think so.	10:55:59
12	Q. Well, I'll represent that it was public that	10:56:03
13	Mr. Levandowski had taken the Fifth before this time.	10:56:07
14	A. Okay.	10:56:07
15	Q. Does that change your answer?	10:56:09
16	A. No, because I had already mentioned to you	10:56:12
17	that there was it took me a while my experience	10:56:17
18	set of being involved in companies in this particular	10:56:21
19	situation is low, so it took me a while to get an	10:56:25
20	understanding of what I felt was the right course of	10:56:28
21	action.	10:56:30
22	Q. Do you remember any discussion about the	10:56:35
23	Waymo litigation on April 10th, 2017 board meeting?	10:56:40
24	A. I do not.	10:56:41
25	Q. Okay. There came a time when Uber made a	10:56:57
	P	age 99

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1	decision to remove Mr. Levandowski from working in the	10:57:03
2	area of LiDAR.	10:57:06
3	Are you familiar with that?	10:57:07
4	A. Um-hum.	10:57:08
5	Q. "Yes"?	
6	A. Yes.	10:57:09
7	Q. Were you involved in that decision?	10:57:14
8	A. The board was informed of that decision. I	10:57:23
9	wouldn't say that the board was involved in that	10:57:26
10	decision. I think it was a response to many of the	10:57:36
11	conversations that were being had about what is the	10:57:39
12	appropriate course of action in light of everything	10:57:42
13	that's happened.	10:57:43
14	Q. Do you remember when that decision was made?	10:57:46
15	A. I do not.	10:57:47
16	Q. When the board was apprised of the decision,	10:57:51
17	had the decision been communicated to Levandowski yet?	10:57:57
18	A. I don't know.	10:57:58
19	Q. Did the board approve it or were they just	10:58:00
20	apprised of it after the fact?	10:58:03
21	A. I don't have specific recollection. I don't	10:58:10
22	think that was something that there was a like a	10:58:15
23	board vote and approval of.	10:58:17
24	Q. Did you read the preliminary injunction order	10:58:24
25	in this case?	10:58:25
	Рас	ge 100

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1	A. Not that I recall.	10:58:29
2	Q. You became aware that there was a preliminary	10:58:33
3	injunction; right?	10:58:34
4	A. Um-hum.	10:58:35
5	Q. "Yes"?	
6	A. Yes.	10:58:36
7	Q. When did you become aware of that?	10:58:39
8	A. I don't remember the specific date.	10:58:40
9	Q. How did you learn about it?	10:58:45
10	A. I don't know if it was through a process like	10:58:48
11	this or in the press. I don't know. I'm sure it was	10:58:53
12	discussed at some point in the board meeting, but with	10:58:57
13	lawyers present.	10:58:59
14	Q. What was your reaction when you learned of	10:59:01
15	it?	10:59:02
16	A. Just an interpretation of what Google was	10:59:22
17	trying to signal by making that decision, to seek an	10:59:27
18	injunction.	10:59:28
19	Q. Did you were you informed of or learned of	10:59:34
20	the reasoning behind the decision in the public	10:59:39
21	opinion issued by the judge?	10:59:41
22	A. State the question again.	10:59:45
23	Q. Did you become aware of the reasoning	10:59:48
24	underlying the decision by the judge to issue a	10:59:53
25	preliminary injunction, which was stated in the actual	10:59:57
	Pag	ge 101

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1	order that was public?		10:59:58
2	A. I didn't have any perspectives that	at were	11:00:08
3	outside of a discussion from counsel on the	at topic.	11:00:13
4	Q. Why didn't Uber fire Mr. Levandows	ski upon the	11:00:20
5	issuance of the preliminary injunction?		11:00:23
6	A. I can't speak to that because I wa	asn't in a	11:00:32
7	position to have authority to make that ded	cision.	11:00:35
8	Q. Who was?		11:00:36
9	A. Presumably Travis, the CEO.		11:00:39
10	Q. So the board didn't have authority	y to direct	11:00:42
11	that I thought you withdrawn.		11:00:46
12	I thought you previously mentioned	d that you	11:00:48
13	had recommended that he be terminated		11:00:50
14	A. I had. I had.		11:00:52
15	Q at a board meeting.		11:00:53
16	A. Yeah.		11:00:54
17	Q. But the board didn't have authoris	ty to order	11:00:56
18	that?		11:00:57
19	A. The board did not order that, if	that's your	11:01:00
20	question.		11:01:00
21	Q. But they had the authority to?		11:01:03
22	A. I suppose they could have made a	motion and	11:01:06
23	voted to do that.		11:01:08
24	Q. And you encouraged the board to do	that?	11:01:11
25	A. I encouraged the board to terminate	te once I	11:01:13
		Pag	ge 102

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1	had an understanding of what my interpretation was of	11:01:18
2	him pleading the Fifth.	
5	Q. After the issuance of the preliminary	11:01:36
6	injunction order, did you have any discussions with	11:01:39
7	Mr. Kalanick about terminating Mr. Levandowski?	11:01:42
8	A. Not specifically related to that event.	11:01:47
9	Q. Okay. So it didn't cause you to have any	11:01:50
10	more conversations with Mr. Kalanick?	11:01:54
11	A. No. But I had already determined that I	11:01:56
12	thought the best course of action was termination. So	11:01:58
13	like I was not more compelled; I was already	11:02:02
14	compelled.	11:02:04
15	Q. Did you discuss the preliminary injunction	11:02:05
16	order with Mr. Kalanick and repeat your	11:02:09
17	recommendation?	11:02:10
18	A. Not outside of a privileged conversation, no.	11:02:14
19	Q. Was there a board meeting about the	11:02:19
20	preliminary injunction?	11:02:20
21	A. I don't remember if there was one called. I	11:02:23
22	don't think so. There were lots of board meetings at	11:02:27
23	this moment in time.	11:02:29
24	Q. Do you recall receiving withdrawn.	11:02:34
25	Did you ask to see the due diligence report	11:02:39
	Pag	ge 103

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1	that was referenced in the board	11:02:42
2	meeting board withdrawn.	11:02:46
6	MR. FLUMENBAUM: I'll let him answer yes or no to	11:03:00
7	that, but I don't want that to be a waiver.	11:03:02
8	Will you agree to that?	11:03:04
9	MR. VERHOEVEN: Agreed.	11:03:05
10	MR. FLUMENBAUM: You can answer that yes or no.	11:03:06
11	THE WITNESS: Yes.	11:03:08
12	BY MR. VERHOEVEN:	11:03:08
13	Q. Did you ask for it?	11:03:10
14	MR. FLUMENBAUM: Same rule?	11:03:11
15	MR. VERHOEVEN: Yes.	11:03:14
16	BY MR. VERHOEVEN:	11:03:14
17	Q. Yes or no?	11:03:16
18	A. Yes.	11:03:16
19	Q. Did you read it?	11:03:18
20	MR. FLUMENBAUM: Again, same rule?	11:03:20
21	MR. VERHOEVEN: Yes.	11:03:21
22	MR. FLUMENBAUM: You can answer that yes or no.	11:03:24
23	THE WITNESS: Yes.	11:03:26
24	BY MR. VERHOEVEN:	11:03:26
25	Q. And that was around May 12th of this year?	11:03:30
	Pa	ge 104

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1	MR. FLUMENBAUM: You can answer that yes or no.	11:03:34
2	THE WITNESS: I don't have any notes in front of	11:03:36
3	me. That sounds like it would be in the general time	11:03:38
4	frame, but I it could be off, you know, by a	11:03:45
5	week or two. I don't have the specific date.	11:03:48
6	BY MR. VERHOEVEN:	11:03:48
7	Q. In that range?	11:03:49
8	A. In that range.	11:03:50
9	Q. Why did you ask for it?	11:03:52
10	MR. FLUMENBAUM: Again, I'll let you answer that	11:03:57
11	question, but don't talk about any conversations that	11:04:06
12	you had with either Uber's counsel or your personal	11:04:10
13	counsel at this point.	11:04:14
14	THE WITNESS: As I already referenced, I felt that	11:04:22
15	this litigation, the one we're involved in today, was	11:04:26
16	critical and important to the company. Once I had	11:04:30
17	gotten up to speed on Anthony's decision to plead the	11:04:35
18	Fifth and the fact that we should be terminating, I	11:04:39
19	felt that it was my duty as a board member to try and	11:04:42
20	know as much as possible about this situation so I	11:04:45
21	could advise the company in the best possible way.	11:04:54
22	BY MR. VERHOEVEN:	11:04:54
23	Q. After you read the diligence report, did you	11:04:59
24	take any action based on reading it? Yes or no?	11:05:06
25	MR. FLUMENBAUM: Again, no waiver; correct?	11:05:08
	Pag	ge 105

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1	MR. VERHOEVEN: Correct.	11:05:10
2	MR. FLUMENBAUM: You can answer that.	11:05:15
3	THE WITNESS: I did not take any immediate	11:05:30
4	specific action related to that.	11:05:35
5	BY MR. VERHOEVEN:	11:05:35
6	Q. What about non-immediate specific action?	11:05:39
7	MR. FLUMENBAUM: Again, I don't want to have to	11:05:54
8	say this. Do we have this whole line of	11:05:56
9	questioning, not going to be any argument of the	11:05:59
10	waiver	11:05:59
11	MR. VERHOEVEN: Agreed. Agreed.	11:06:01
12	MR. FLUMENBAUM: Because I have to obey the waiver	11:06:03
13	rules here.	11:06:04
14	MR. VERHOEVEN: Agreed.	11:06:05
15	MR. FLUMENBAUM: Okay.	11:06:05
16	THE WITNESS: I'm not aware of anything that	11:06:29
17	specifically ties to that investigation in terms of my	11:06:35
18	action.	11:06:36
19	BY MR. VERHOEVEN:	11:06:36
20	Q. You gave a copy of the diligence report to	11:06:39
21	your personal counsel at Paul Weiss; right?	11:06:43
22	MR. FLUMENBAUM: Again?	11:06:45
23	MR. VERHOEVEN: I have a continuing agreement with	11:06:47
24	you.	11:06:48
25	MR. FLUMENBAUM: All right.	11:06:48
	Pag	ge 106

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1	THE WITNESS: Yes.	11:06:51
2	BY MR. VERHOEVEN:	11:06:51
3	Q. Why did you do that?	11:06:52
4	A. I think it's consistent with what I said	11:06:55
5	before. I was trying to understand the details of the	11:07:02
6	litigation and the situation and make sure that I was	11:07:07
7	as informed as I possibly could be.	11:07:11
8	Q. Were you concerned withdrawn.	11:07:14
9	Did you send it to your personal lawyer to	11:07:16
10	make sure that you did the right things with respect	11:07:19
11	to this lawsuit?	11:07:22
12	MR. BRILLE: Object to form.	11:07:28
13	THE WITNESS: Yes.	11:07:29
14	BY MR. VERHOEVEN:	11:07:29
15	Q. Did you send it to him to ensure that you	11:07:33
16	were protected from liability?	11:07:34
17	MR. FLUMENBAUM: Objection. I'm going to instruct	11:07:35
18	him not to answer that.	11:07:40
19	BY MR. VERHOEVEN:	11:07:40
20	Q. Was there any other reason that you sent a	11:07:43
21	copy of this specific report to your personal lawyer?	11:07:47
22	MR. FLUMENBAUM: Other than what he's answered?	11:07:49
23	MR. VERHOEVEN: Yes.	11:07:50
24	THE WITNESS: And just you keep saying	11:07:56
25	"personal." Paul Weiss represents Benchmark, our	11:07:59
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1	firm. He's not my personal lawyer.	11:08:01
2	BY MR. VERHOEVEN:	11:08:01
3	Q. So he wasn't your personal lawyer?	11:08:04
4	A. Yeah.	11:08:05
5	Q. Okay. Thanks for clarifying that.	11:08:08
6	The question is outstanding.	11:08:11
7	Was there any other reason other than what	11:08:14
8	you testified to	11:08:15
9	A. No.	11:08:16
10	Q. And then you gave a copy to	11:08:21
11	Shearman & Sterling; is that right?	11:08:23
12	A. It's possible.	11:08:30
13	Q. Why would you give a copy to	11:08:33
14	Shearman & Sterling?	11:08:34
17	Q. I see.	11:08:40
18	MR. VERHOEVEN: Can I get	11:09:05
19	Let's mark as Exhibit 913 a copy of board	11:09:24
20	minutes dated May 15th, 2017.	11:09:28
21	(Plaintiff's Exhibit 913 was marked.)	11:09:47
22	BY MR. VERHOEVEN:	11:09:47
23	Q. Can you identify this, again,	11:09:49
24	redacted-by-Uber document?	11:09:52
25	(Witness reviews document.)	11:10:16
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1	A. Okay.	11:10:16
2	Q. Can you identify that for me.	11:10:18
3	A. It's the minutes from a May 15th board	11:10:21
4	meeting of Uber.	11:10:23
5	Q. And you attended that meeting; right?	11:10:25
6	A. Yes.	11:10:25
10	MR. VERHOEVEN: And I assume, Counsel, that if I	11:10:39
11	ask any questions about the substance of that report,	11:10:41
12	you'll instruct the witness not to answer?	11:10:43
13	MR. FLUMENBAUM: That's correct. Based on Uber	11:10:48
14	taking the Fifth on that.	11:10:49
15	MR. VERHOEVEN: Oh, it's their fault.	11:10:52
16	MR. FLUMENBAUM: It's no one's fault. It's either	11:10:54
17	privileged or it's not privileged.	11:10:57
18	BY MR. VERHOEVEN:	11:10:57
19	Q. If you turn to the second page, Mr. Gurley.	11:10:59
20	A. Yes.	11:11:01
	Pa	age 109

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6	Q. Did termination occur after this meeting?	11:1
7	I'm sorry.	11:1
8	Did termination occur as a result of this	11:1
9	meeting?	11:1
. 0	A. I don't think so.	11:1
1	Q. Why not?	11:1
5	Q. Okay.	11:1
<b>]</b> )		
8	Q. Is it fair to say that, at this point in	11:1
9	time, Mr. Kalanick was aggressively trying to block	11:1
20	efforts to terminate Mr. Levandowski?	11:1
21	MR. BRILLE: Object to form.  THE WITNESS: I can't assert I can't qualify	11:1
3	the aggressive part, but it is my interpretation that	11:1
4	he was not in favor of termination.	11:1
5	BY MR. VERHOEVEN:	11:1
-		ge 11

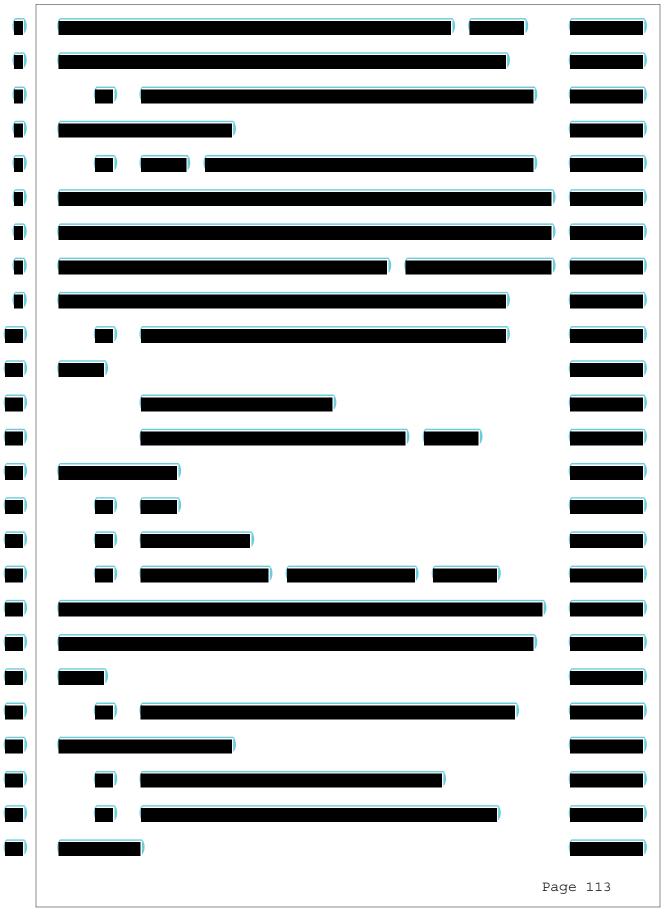
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1	Q. Was he trying to block it?	11:12:41
2	A. I would say he was arguing that we should	11:12:47
3	not.	11:12:48
4	Q. He was the lead person arguing that; right?	11:12:51
5	A. From my perspective, correct.	11:12:54
6	Q. Was there anyone else on the board arguing	11:12:56
7	that at this point in time?	11:12:58
8	A. I do not recall anyone else having a strong	11:13:02
9	opinion of that on that side of the argument.	11:13:05
10	Q. What about prior board meetings? Did anyone	11:13:09
11	other than Mr. Levandowski [sic] argue that	11:13:13
12	termination was inappropriate	11:13:15
13	MR. FLUMENBAUM: Objection as to form.	11:13:17
14	BY MR. VERHOEVEN:	11:13:17
15	Q at the board meetings?	11:13:19
16	MR. FLUMENBAUM: Objection as to form.	11:13:21
17	I think you misspoke.	11:13:22
18	BY MR. VERHOEVEN:	11:13:22
19	Q. Oh. Thank you.	11:13:25
20	What about other prior board meetings? Did	11:13:27
21	anyone other than Mr. Kalanick argue that termination	11:13:30
22	was inappropriate?	11:13:32
23	A. Not that I'm aware of.	11:13:34
24	Q. At this point in time, of this board meeting,	11:13:44
25	Mr. Levandowski was refusing to cooperate with Uber;	11:13:49
	Pa	ge 111

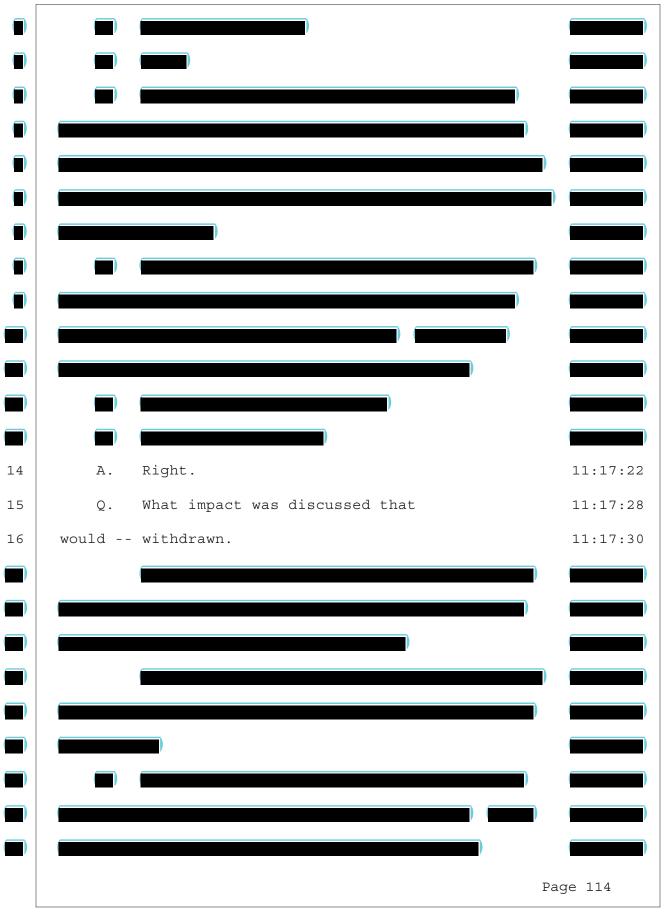
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1	right?	11:13:49
2	A. That is my interpretation of the pleading the	11:13:54
3	Fifth.	11:13:56
4	Q. So yes?	11:13:57
5	A. Yes.	11:13:57
6	Q. And he had been refusing to cooperate from	11:14:01
7	the beginning of the complaint all the way through	11:14:04
8	this point; right?	11:14:05
9	MR. FLUMENBAUM: Objection as to form.	11:14:12
10	THE WITNESS: I didn't have specific conversations	11:14:15
11	with him. I don't even know if I ever have. And so	11:14:19
12	my interpretation of the noncooperation started with	11:14:23
13	the pleading of the Fifth.	11:14:25
14	BY MR. VERHOEVEN:	11:14:25
15	Q. Okay.	11:14:26
16	A. That's the only knowledge I have.	11:14:28
	Pag	ge 112

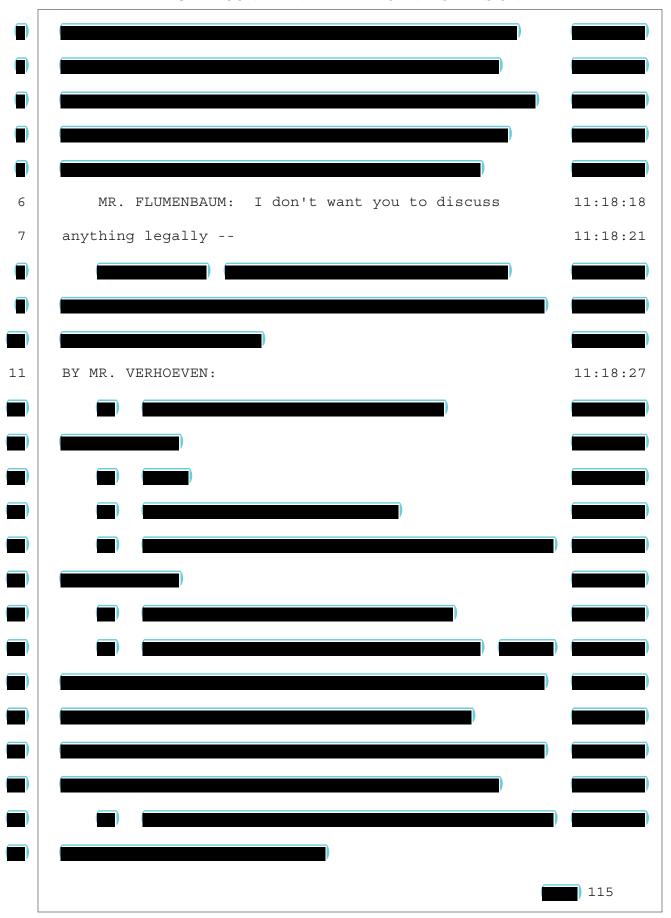
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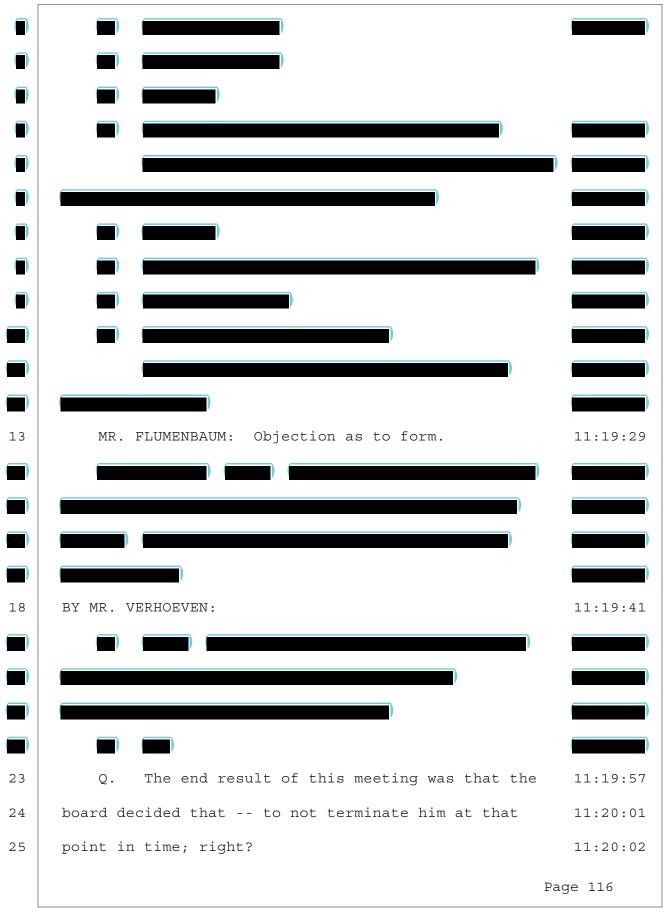
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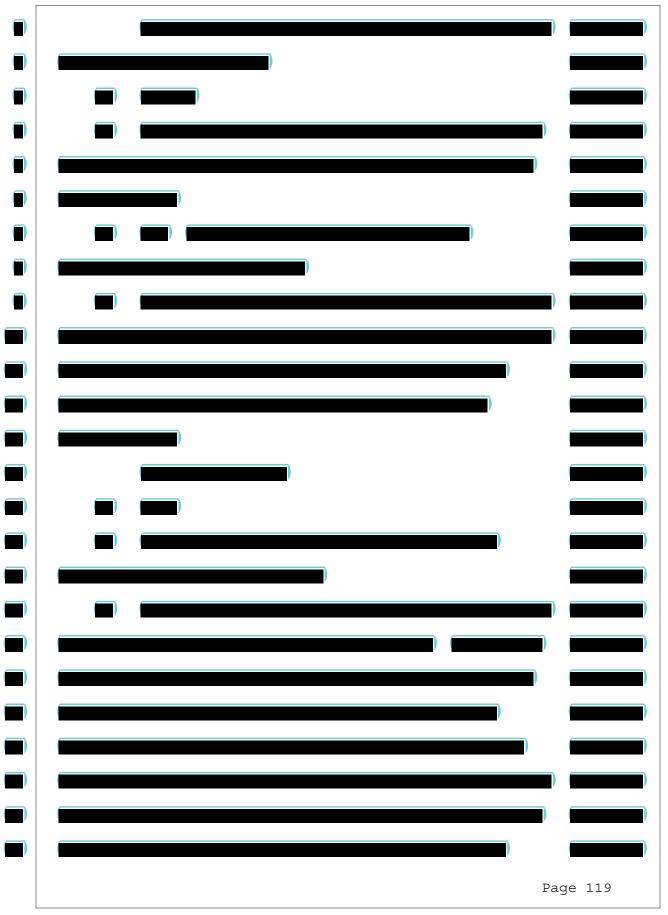
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1	A. I believe that's correct. I don't	11:20:04
2	have there were several board meetings around this	11:20:07
3	moment in time. And eventually one of them, there was	11:20:09
4	termination, not far from this date.	
		11:20:37
12	Q. Okay.	11:20:38
13	MR. VERHOEVEN: Let's mark as Exhibit 914 minutes	11:20:49
14	of a meeting of board of directors of Uber dated May	11:20:53
15	22nd, 2017.	11:20:55
16	(Plaintiff's Exhibit 914 was marked.)	11:21:14
17	BY MR. VERHOEVEN:	11:21:14
18	Q. Take a second and look at that.	11:21:16
19	My first question will be, can you identify	11:21:19
20	this document?	11:21:19
21	A. This is the minutes of the May 22nd meeting	11:21:25
22	of Uber Technologies.	11:21:29
23	Q. Before we get into the document, let me just	11:21:32
24	ask you: Typically how often does the board meet for	11:21:38
25	Uber, the Uber board meet?	11:21:41
	Pag	ge 117

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1	A. Prior to 2017, the Uber board met	11:21:50
2	predominantly quarterly.	11:21:53
3	Q. Once a quarter?	11:21:54
4	A. Yes.	11:21:54
5	Q. And did that change in 2017?	11:21:57
6	A. Yes.	11:21:57
7	Q. Why?	11:21:59
8	A. There were numerous issues that were of	11:22:04
9	importance that were impacting the company that	11:22:07
10	resulted in the board taking more frequent board	11:22:11
11	meetings, including the Waymo litigation.	11:22:14
12	Q. Okay. So this is this reflects the	11:22:18
13	minutes of a May 22 board meeting; right?	11:22:21
14	A. Correct.	11:22:21
		Page 118

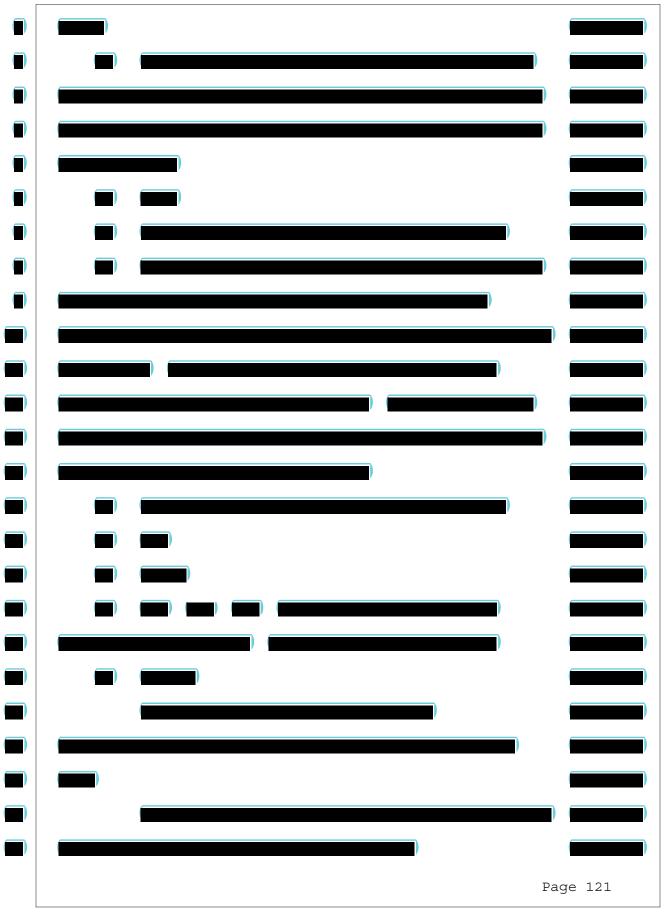
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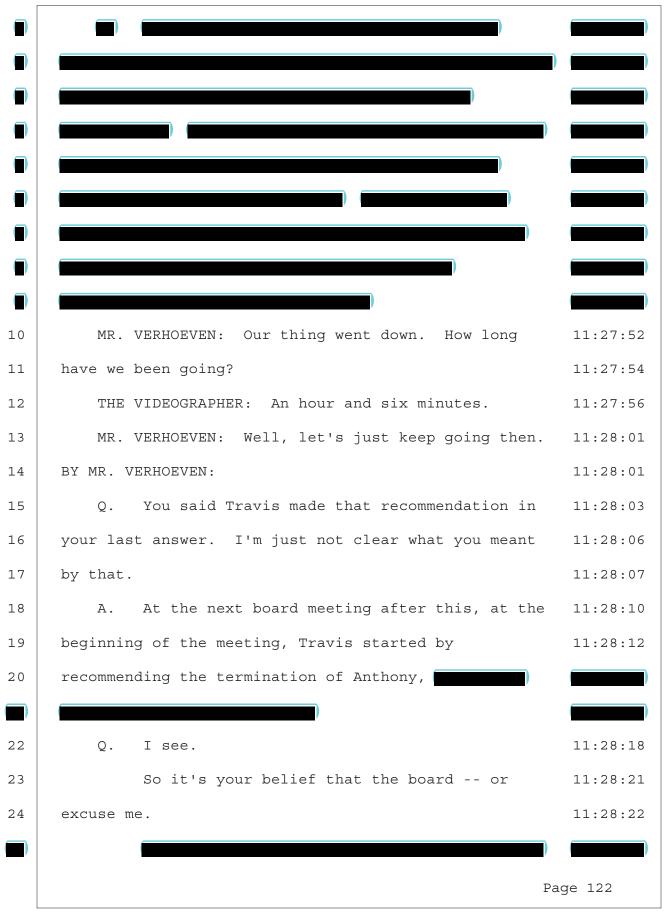
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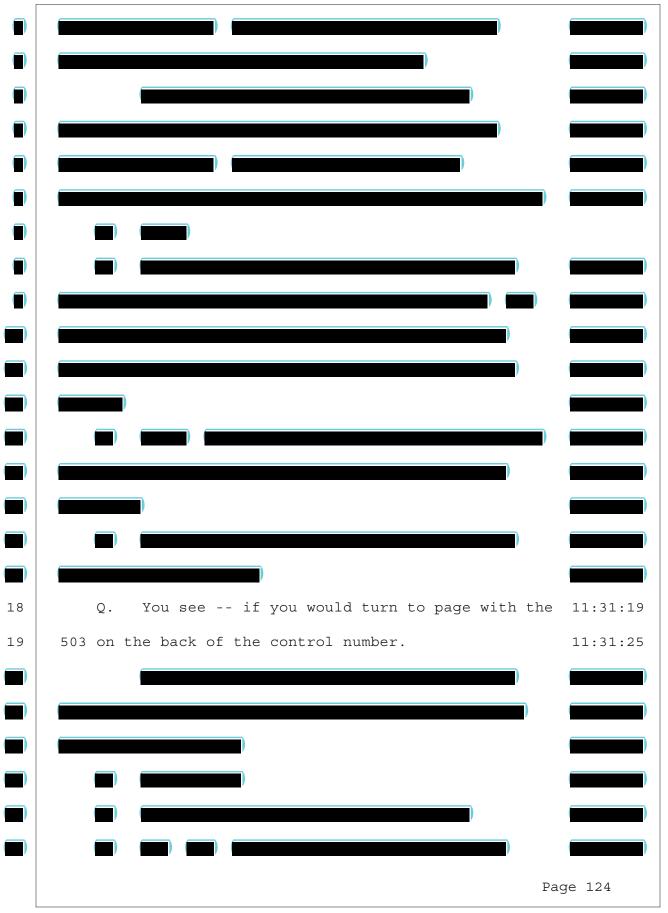
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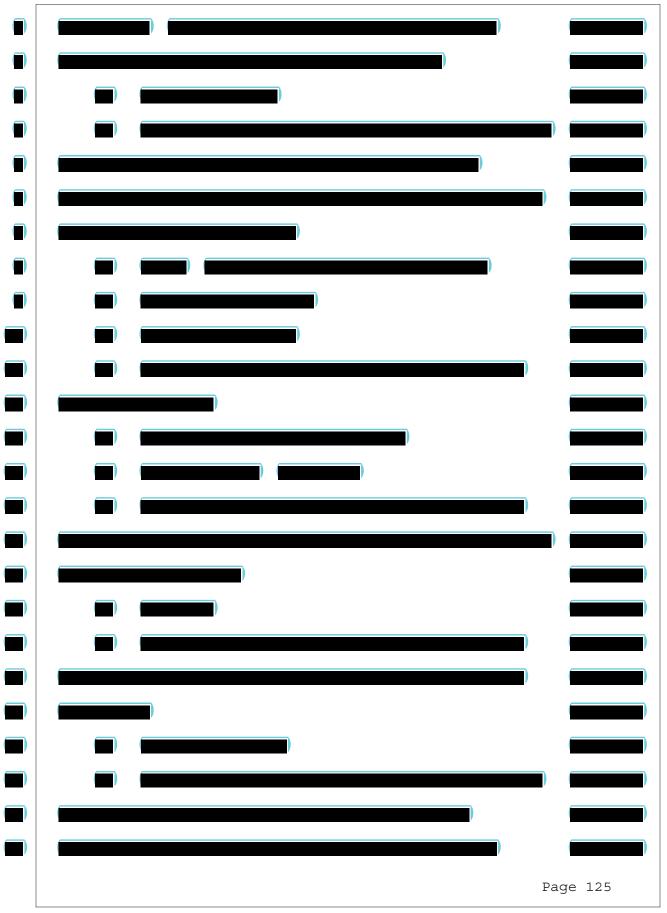
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1	MR. FLUMENBAUM: Objection.	11:33:29
2	MR. BRILLE: Objection.	11:33:29
3	MR. FLUMENBAUM: You want to exclude counsel from	11:33:31
4	any discussions with the board? I can't let him	11:33:39
5	answer that question as worded.	11:33:43
6	MR. VERHOEVEN: So you're instructing him on just	11:33:45
7	general statements	11:33:47
8	MR. FLUMENBAUM: No, on privilege.	11:33:49
9	BY MR. VERHOEVEN:	11:33:49
10	Q. As of May 22, had the board received this	11:34:08
11	is a yes or no.	11:34:08
12	As of May 22, had the board received any	11:34:13
13	report on the veracity of the allegation that	11:34:16
14	Mr. Levandowski had downloaded 14,000 files?	11:34:25
15	MR. FLUMENBAUM: I'm going to instruct him not to	11:34:27
16	answer that question as worded, based on privilege.	11:34:33
17	MR. VERHOEVEN: Is there a way I could word it	11:34:36
18	that you would say is not privileged?	11:34:38
19	MR. FLUMENBAUM: Other than either documents	11:34:44
20	received that are still claimed to be privileged in	11:34:48
21	this situation, did the board receive any reports from	11:34:54
22	anyone other than counsel, and then your	11:34:58
23	MR. VERHOEVEN: Okay.	11:34:59
24	BY MR. VERHOEVEN:	
25	Q. Can you answer that question?	11:35:00
	Pag	ge 126

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1	MR. FLUMENBAUM: I think you have to rephrase it.	11:35:03
2	MR. VERHOEVEN: I don't want to make a mistake.	11:35:05
3	Let me reread what you said then.	11:35:07
4	BY MR. VERHOEVEN:	11:35:07
5	Q. Other than either documents received that are	11:35:14
6	still claimed to be privileged in this situation, did	11:35:17
7	the board receive any reports from anyone other than	11:35:20
8	counsel with respect to the download of the 14,000	11:35:25
9	files?	11:35:26
10	A. No.	11:35:27
11	Q. And this is a yes or no.	11:35:33
12	Did the board receive a report from counsel	11:35:36
13	on that subject matter?	11:35:38
14	MR. FLUMENBAUM: Instruction not to answer.	11:35:41
15	BY MR. VERHOEVEN:	11:35:41
16	Q. As of May 22, did the board have any	11:35:48
17	information, any factual information, not legal	11:35:52
18	advice, but factual information about the allegation	11:35:57
19	that Mr. Levandowski had downloaded 14,000 files?	11:36:01
20	MR. FLUMENBAUM: Instruction not to answer.	11:36:03
21	BY MR. VERHOEVEN:	11:36:03
22	Q. As of this date, did the board know one way	11:36:15
23	or the other whether Stroz had documents that	11:36:24
24	Mr. Levandowski had taken from Google?	11:36:27
25	MR. FLUMENBAUM: Instruction not to answer.	11:36:29
	Pag	ge 127

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1	BY MR. VERHOEVEN:	11:36:29
2	Q. Did you know one way or the other?	11:36:31
3	MR. FLUMENBAUM: Instruction not to answer.	11:36:53
4	BY MR. VERHOEVEN:	11:36:53
5	Q. If you had known that it was true that	11:36:55
6	Mr. Levandowski downloaded 14,000 Google files and	11:37:01
7	then went to Otto and was purchased by Uber, would you	11:37:06
8	have done anything about that?	11:37:08
9	MR. BRILLE: Object to form.	11:37:09
10	MR. FLUMENBAUM: You may answer that question as	11:37:11
11	worded.	11:37:12
12	THE WITNESS: When would I have known that?	11:37:16
13	BY MR. VERHOEVEN:	
14	Q. I'm saying, if you would've known that	
15	A. At what point in time would I have known	11:37:18
16	that?	11:37:19
17	Q. Any point in time.	11:37:21
18	A. Well, if I had known that, I would have	11:37:24
19	objected to the transaction, if I had known that at	11:37:29
20	the date of that transaction.	11:37:31
21	Q. Okay. So if you had known that if you had	11:37:33
22	known the results of the due diligence report, would	11:37:37
23	you have objected to the transaction?	11:37:39
24	MR. BRILLE: Object to form.	11:37:47
25	MR. FLUMENBAUM: We're making assumptions as to	11:37:55
	Pag	ge 128

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1	what's in the due diligence report, so is there a	11:37:58
2	way you can rephrase that question?	11:38:02
3	MR. VERHOEVEN: I don't think so. I'm asking the	11:38:06
4	witness I'll ask it again.	11:38:08
5	BY MR. VERHOEVEN:	11:38:08
6	Q. Without revealing the substance of the	11:38:11
7	diligence report, if you had known about it at the	11:38:16
8	time of the transaction, would you have objected to	11:38:19
9	moving forward with the transaction?	11:38:22
10	MR. BRILLE: Object to form.	11:38:23
11	MR. FLUMENBAUM: Would you agree that follows our	11:38:25
12	non-waiver	11:38:26
13	MR. VERHOEVEN: Yes.	11:38:28
14	THE WITNESS: Yes.	11:38:32
15	MR. VERHOEVEN: And if I ask why, I assume I'll	11:38:40
16	get an instruction?	11:38:41
17	MR. FLUMENBAUM: You will until that report is	11:38:42
18	released.	11:38:44
19	MR. VERHOEVEN: Okay.	11:38:44
20	BY MR. VERHOEVEN:	
21	Q. Was that withdrawn.	11:38:48
22	Would you have considered that to be material	11:38:52
23	information with respect to whether to approve the	11:38:57
24	transaction or not?	11:38:59
25	MR. FLUMENBAUM: Same not going to argue	11:39:03
	Pa	ge 129

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1	waiver?	11:39:03
2	MR. VERHOEVEN: Correct.	11:39:04
3	MR. BRILLE: Object to form.	11:39:05
4	MR. FLUMENBAUM: You can answer yes or no.	11:39:07
5	THE WITNESS: Yes.	11:39:08
6	BY MR. VERHOEVEN:	11:39:08
7	Q. What was your reaction when you saw when	11:39:32
8	you read the Stroz report with respect to the fact	11:39:37
9	that it was not disclosed to the board at the time of	11:39:39
10	the acquisition? Were you upset?	11:39:43
11	MR. BRILLE: I'll object to form.	11:39:46
12	MR. FLUMENBAUM: I'll object to the form also.	11:39:49
13	Again I'll let him answer that without claim of	11:39:55
14	waiver.	11:39:56
15	MR. VERHOEVEN: Yes.	11:39:56
16	THE WITNESS: Yes.	11:39:58
17	BY MR. VERHOEVEN:	11:39:58
18	Q. Why?	11:40:00
19	MR. BRILLE: Same objections.	11:40:01
20	MR. VERHOEVEN: I'm asking for his reaction.	11:40:03
21	MR. FLUMENBAUM: So you got you got his answer.	11:40:06
22	He can't answer more than that without going into	11:40:09
23	substance.	11:40:10
24	BY MR. VERHOEVEN:	11:40:10
25	Q. Did you call up Mr. Levandowski after reading	11:40:13
	Pag	ge 130

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1	it and accost him about it?	11:40:15
2	I'm sorry. Let me withdraw that.	11:40:16
3	Did you call him	11:40:18
4	MR. FLUMENBAUM: Maybe we should take a break.	11:40:20
5	MR. VERHOEVEN: Just one more.	11:40:22
6	BY MR. VERHOEVEN:	11:40:22
7	Q. Did you call up Mr. Kalanick or e-mail him or	11:40:25
8	something, in any way communicate with him, to accost	11:40:29
9	him about the fact that this was not disclosed prior	11:40:32
10	to the board making the decision to acquire?	11:40:37
11	MR. BRILLE: Object to form.	11:40:38
12	THE WITNESS: I don't know if there was I don't	11:40:40
13	know if I called him directly or specifically.	11:40:43
14	BY MR. VERHOEVEN:	11:40:43
15	Q. Did you have a conversation?	11:40:45
16	A. With anybody?	11:40:47
17	Q. With Mr. Kalanick.	11:40:50
18	A. Yeah, I don't know I don't know if I had a	11:40:53
19	direct I just don't remember.	11:40:56
20	Q. You don't remember expressing any anger to	11:41:00
21	him about it?	11:41:04
22	A. It's possible. There's a lot going on at the	11:41:16
23	time.	11:41:16
24	Q. You were angry about it, weren't you?	11:41:19
25	A. I was.	11:41:20
	Pag	ge 131

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1	Q. And it's possible you communicated that to	11:41:22
2	Mr. Levandowski or to Mr. Kalanick?	11:41:25
3	A. It's possible, but I don't have	11:41:26
4	MR. FLUMENBAUM: Not Levandowski.	11:41:27
5	THE WITNESS: Right.	11:41:28
6	I don't have specific recollection of having	11:41:31
7	done that, but it's possible.	11:41:33
8	BY MR. VERHOEVEN:	11:41:33
9	Q. It's more than likely; right?	11:41:35
10	A. I don't know.	11:41:37
11	MR. FLUMENBAUM: Objection. Objection.	11:41:38
12	MR. VERHOEVEN: Do you want to take a break?	11:41:42
13	MR. FLUMENBAUM: Sure. Let's take a short break.	11:41:44
14	THE VIDEOGRAPHER: This marks the end of DVD No. 2	11:41:47
15	in the deposition of William Gurley. We're off the	11:41:49
16	record at 11:41 a.m.	11:41:51
17	(Recess taken.)	11:41:51
18	(Plaintiff's Exhibit 915 was marked.)	11:52:45
19	THE VIDEOGRAPHER: Back on the record.	11:52:53
20	This the beginning of DVD No. 3, and the time	11:52:56
21	is 11:52 a.m.	11:52:58
22	BY MR. VERHOEVEN:	11:52:58
23	Q. By May of 2017, were you aware that some	11:53:07
24	investors of Uber wanted Mr. Kalanick to resign as	11:53:13
25	CEO?	11:53:14
	Pag	ge 132

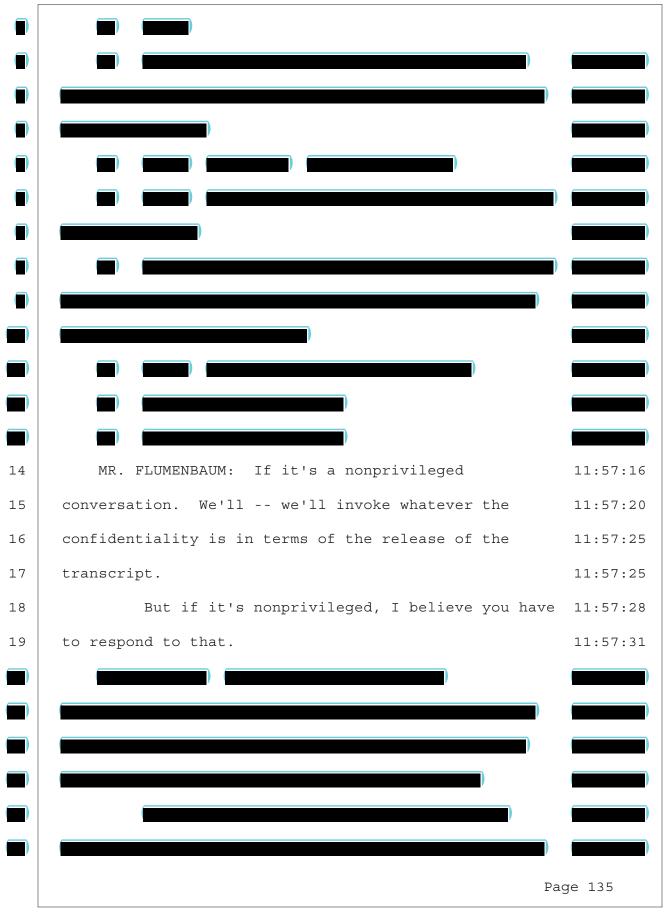
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1	A. By May	11:53:27
2	Q. That's three months ago.	11:53:30
3	A. Yeah. I'm just trying to remember when some	11:53:33
4	of those conversations first started.	11:53:36
5	I can't I can't be specific about whether	11:53:40
6	by May. Certainly around that time frame people had	11:53:46
7	started to ask that question.	11:53:48
8	Q. And who are those people?	11:53:56
9	A. Well, a lot of I think many journalists	11:53:59
10	had begun to ask that question. So you'd see	11:54:02
11	editorials in the Financial Times, New York Times,	11:54:08
12	like there's a lot of I don't know exactly when	11:54:10
13	they ran. I think they were around that time frame.	11:54:12
14	But I don't I don't recall a specific May	11:54:20
15	conversation with a specific investor about it.	11:54:24
16	Q. Well, do you recall that you at around	11:54:27
17	that time, not specific date or anything that you	11:54:31
18	had conversations with investors on that topic?	11:54:34
19	A. It's possible. I mean, I it may even be	11:54:40
20	probable. I just don't I don't I don't know	11:54:41
21	about at that moment in time who I exactly who I	11:54:44
22	talked to about that topic.	11:54:46
23	Q. What do you remember about first to the	11:54:49
24	extent that you can make it chronological, can you	11:54:54
25	tell me what you remember first about that topic?	11:54:58
	Pa	ge 133

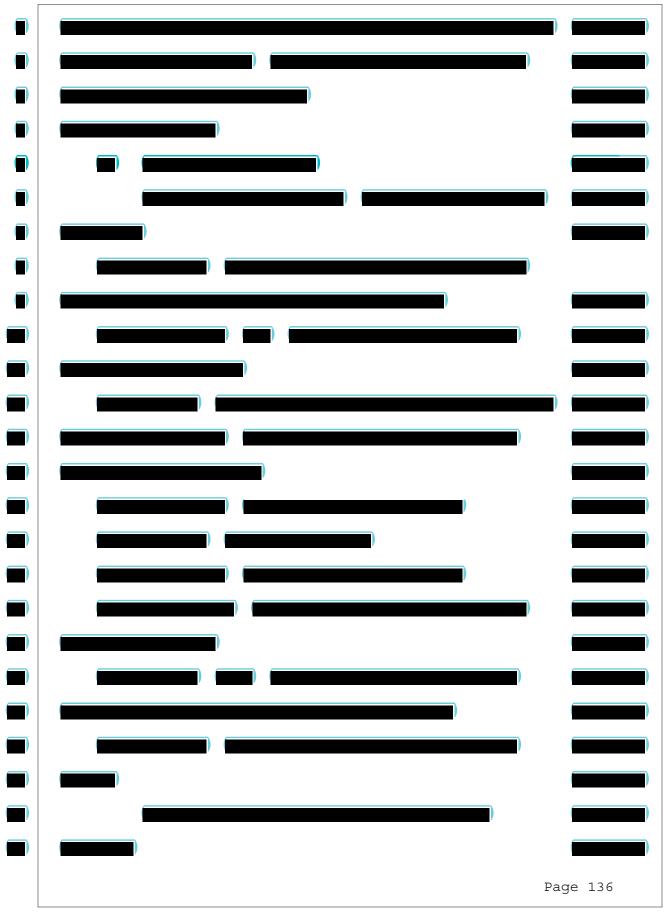
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1	A. Well, there are a number of instances that	11:55:00
2	had happened in the company in 2017, and that had led	11:55:05
3	to a general perception in the public that that might	11:55:09
4	be the right answer, which	11:55:11
5	Q. Okay.	
6	A which, as I mentioned, was discussed in	11:55:16
7	some of the leading financial publications around the	11:55:19
8	globe.	11:55:20
9	And naturally that's going to cause you	11:55:23
10	know when something has that much open discussion,	11:55:27
11	it's going to lead to other people discussing what the	11:55:31
12	right action is one way or another in terms of	11:55:34
13	ensuring the long-term health and success of the	11:55:39
14	organization.	11:55:40
	Pa	ge 134

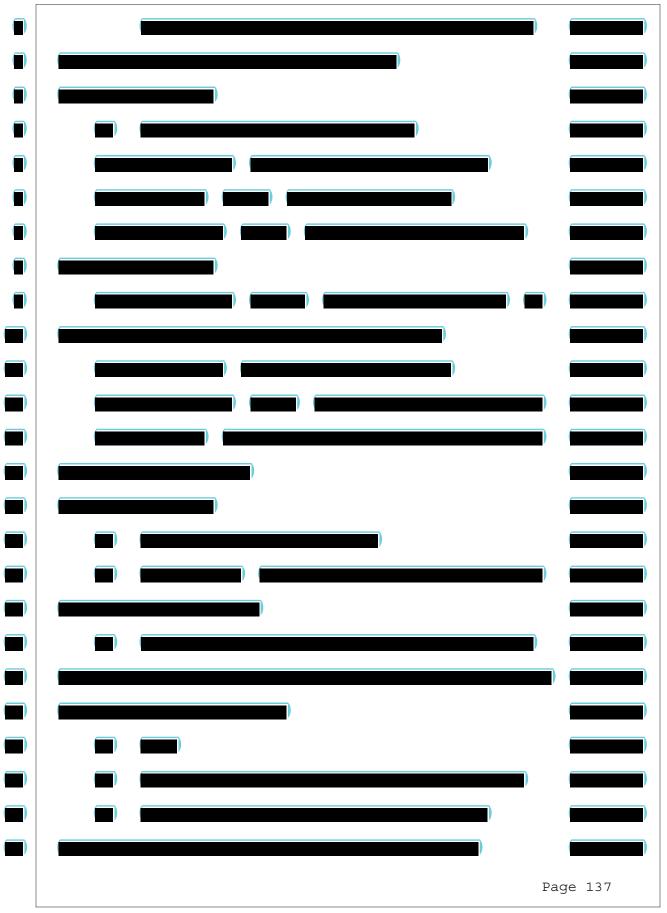
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#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 138 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



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10	BY MR. VERHOEVEN:	12:01:08
11	Q. You felt that the way that the acquisition	12:01:18
12	was handled was an example of company mismanagement,	12:01:23
13	right?	12:01:24
14	MR. BRILLE: Object to form.	12:01:31
15	MR. FLUMENBAUM: You've this is in you've	12:01:31
16	already we already covered this area before. I	12:01:36
17	mean	
18	MR. VERHOEVEN: Are you instructing him?	12:01:37
19	MR. FLUMENBAUM: I I'm not I'm not are	12:01:39
20	you trying to get privileged communications? I'm	12:01:42
21	not	
22	MR. VERHOEVEN: No. Can he answer?	12:01:45
23	MR. FLUMENBAUM: You can answer it if you	12:01:47
24	THE WITNESS: Yes. I I believe it had	12:01:49
25	the had there been more disclosures around the	12:01:55
		Page 138

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1	acquisition, that we may not have done the	12:01:58
2	acquisition. And I believe that had we terminated	12:02:01
3	Anthony, upon him pleading the Fifth, that that would	12:02:05
4	have been a much better interest for the company as a	12:02:08
5	whole.	12:02:09
6	BY MR. VERHOEVEN:	12:02:09
7	Q. Did other investors share that view?	12:02:13
8	A. I don't recall having that specific	12:02:17
9	conversation about that specific topic with people	12:02:20
10	outside of the group.	12:02:22
16	MR. VERHOEVEN: Let's get the June 20 letter.	12:02:41
17	(Plaintiff's Exhibit 916 was marked.)	12:03:08
18	THE REPORTER: This is marked Exhibit 916. There	12:03:08
19	was a prior exhibit marked before we went back on the	
20	record.	
21	MR. VERHOEVEN: Yeah. Let's do 915 before we go	12:03:11
22	to this. I forgot about that one.	12:03:12
23	BY MR. VERHOEVEN:	
24	Q. So put that aside, Mr. Gurley.	12:03:15
25	A. Oh, put that aside?	12:03:18
	Pa	ge 139

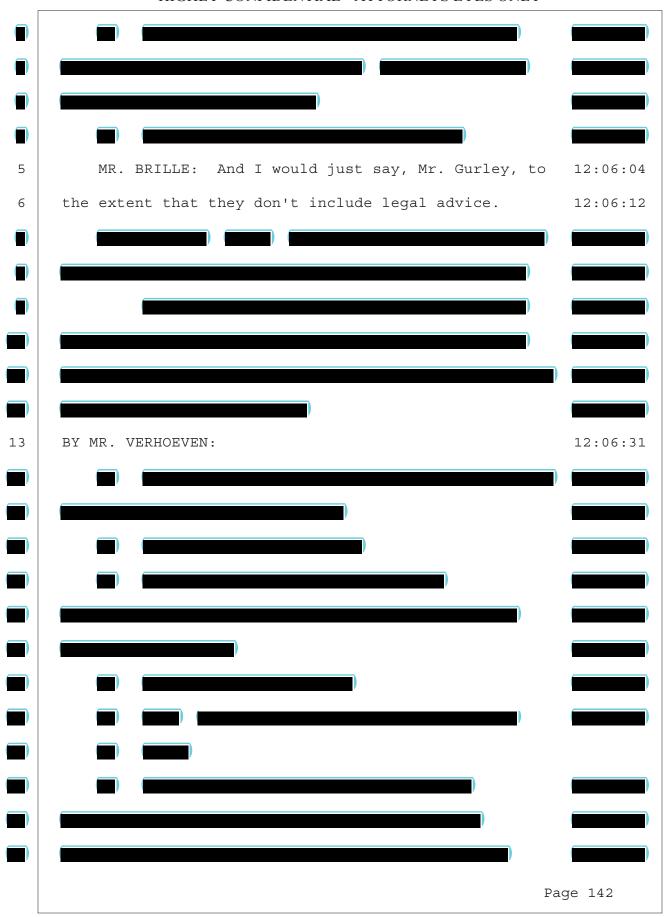
# Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 141 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1	MR. FLUMENBAUM: This is 916?	12:03:20
2	BY MR. VERHOEVEN:	12:03:20
3	Q. Yes. But just one housekeeping matter here.	
4	Take a look at 915.	12:03:34
5	I didn't hand it out, did I?	12:03:37
6	A. No, sir.	
7	Q. Can you identify Exhibit 915?	12:03:50
8	A. 915, board minutes from May 25th of Uber	12:03:55
9	Technologies.	12:03:55
10	Q. And you attended this meeting?	12:03:57
11	A. Yes.	12:04:00
12	Q. What happened at this meeting?	12:04:04
13	A. My	12:04:14
14	Q. The last meeting, just for your information,	12:04:16
15	was May 22?	12:04:18
16	A. Yeah. My my my best recollection is	12:04:20
17	this is the meeting that Travis recommended	12:04:21
18	terminating Anthony Levandowski.	12:04:24
19	Q. Under Item 1, the only thing that's not	12:04:33
20	redacted by counsel for Waymo says:	12:04:37
24	Do you see that?	12:04:44
25	A. Did you mean counsel of Uber?	12:04:46
	Pa	age 140

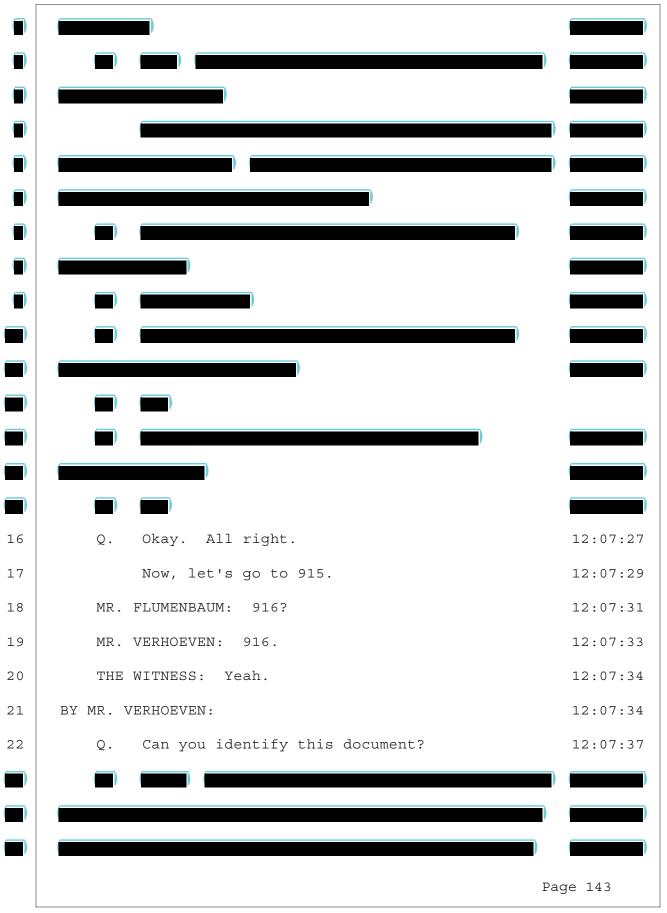
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1	Q. Yeah. What did I say? Counsel for Uber.	12:04:50
2	A. Okay. What's the question?	12:04:52
11	MR. FLUMENBAUM: Again, to the extent that your	12:05:09
12	testimony would involve privileged communications	12:05:12
13	THE WITNESS: Right.	
14	MR. FLUMENBAUM: you're not at liberty to	12:05:14
15	discuss that.	12:05:15
16	THE WITNESS: I would say this specifically	12:05:19
17	related to legal discussions that was privileged.	12:05:24
18	MR. VERHOEVEN: Uber's counsel didn't redact this	12:05:26
19	sentence.	12:05:27
20	MR. BRILLE: That's because the sentence itself is	12:05:32
21	not privileged. But perhaps conversations that relate	12:05:33
22	to these topics may be privileged.	12:05:36
23	BY MR. VERHOEVEN:	12:05:36
	Pa	ge 141

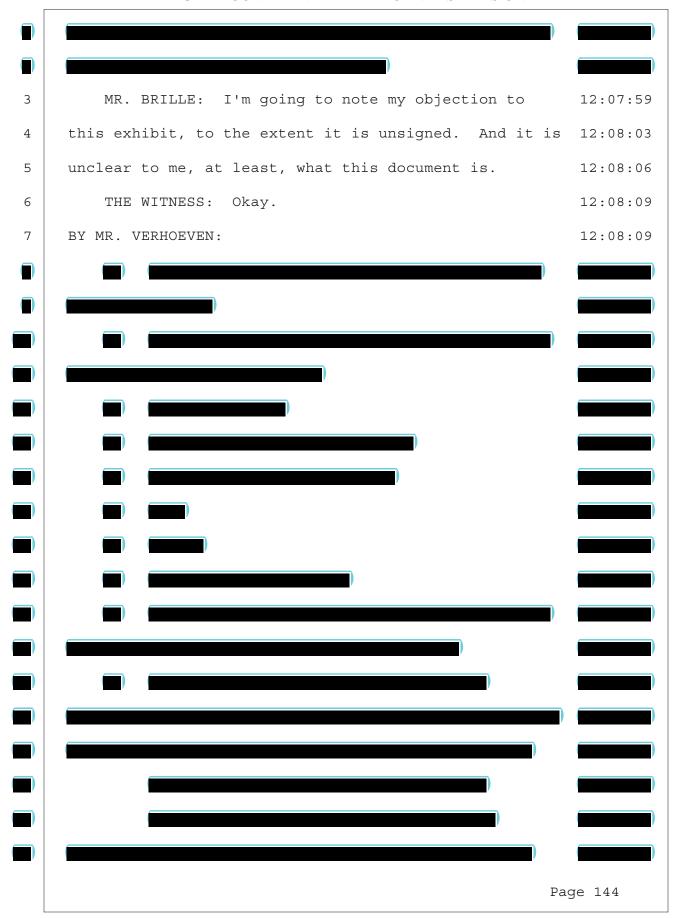
#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 143 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



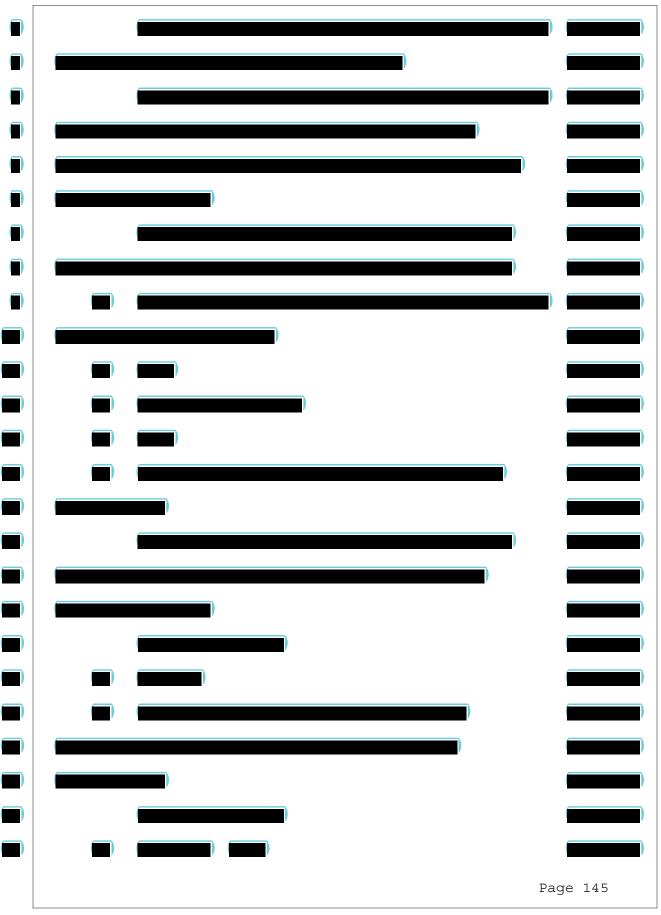
#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 144 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



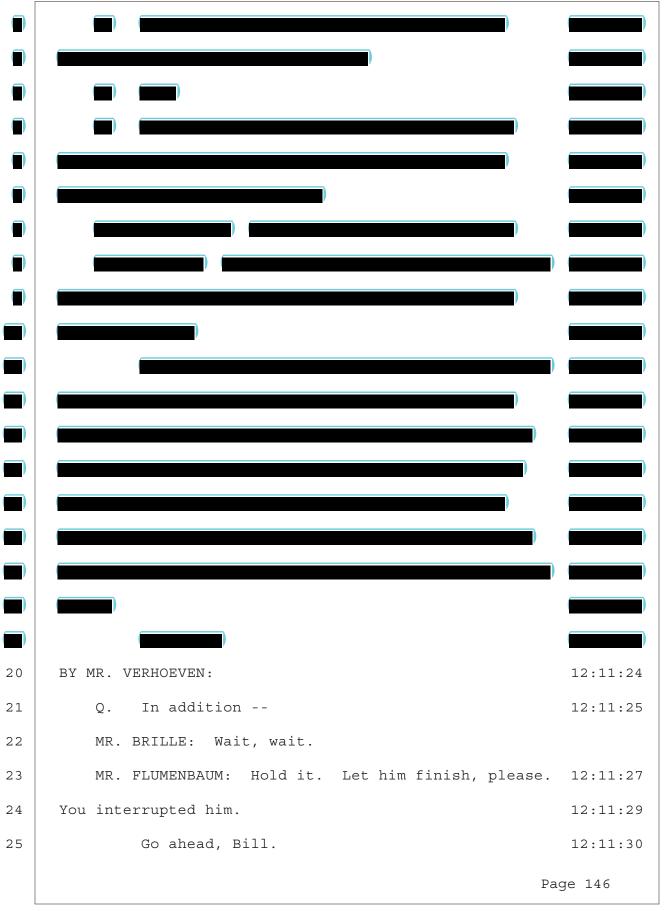
#### Case 3:17-cv-00939-WHA Document 1548-11 Filed 09/13/17 Page 145 of 183 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



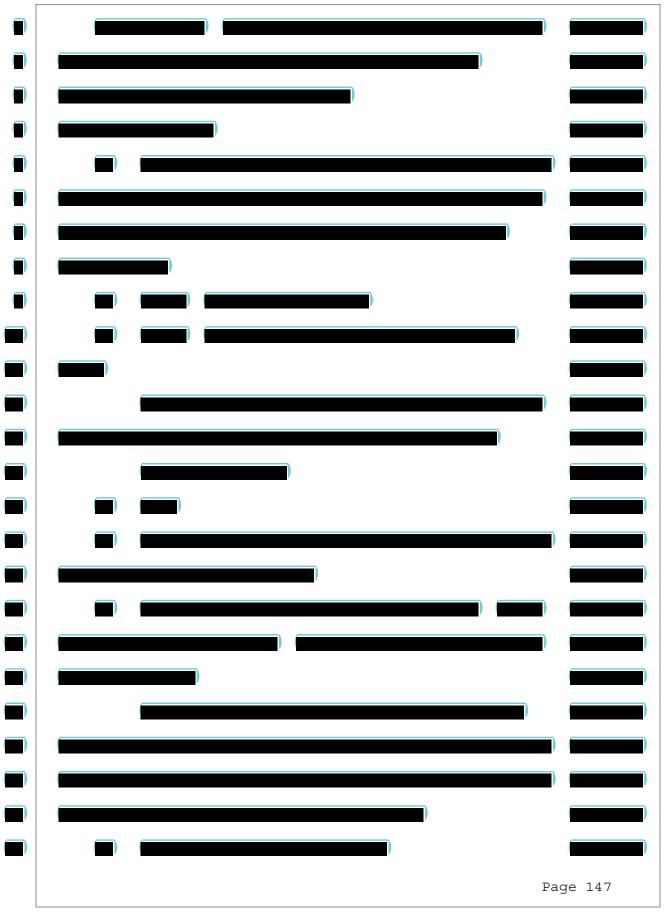
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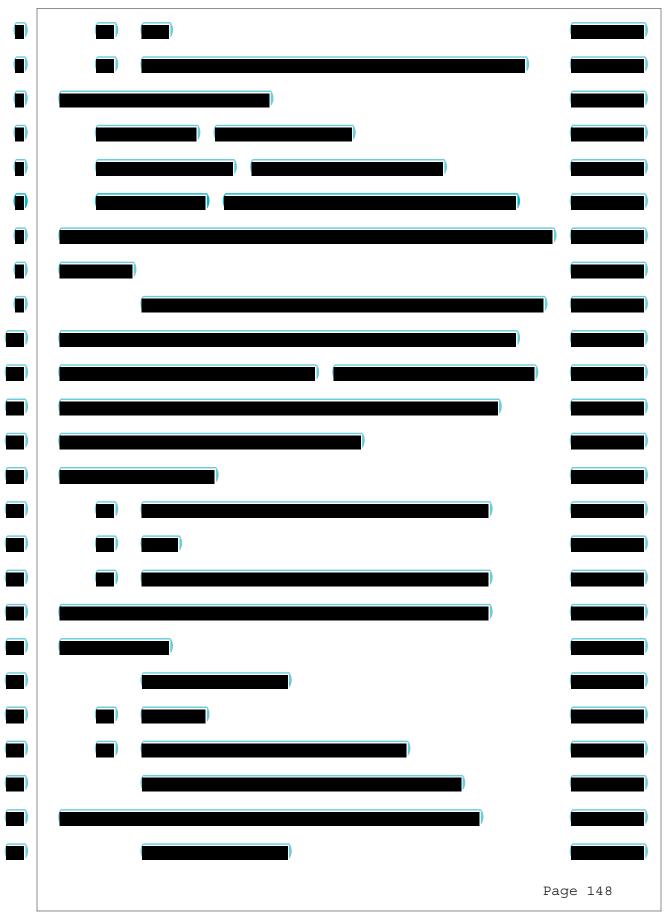
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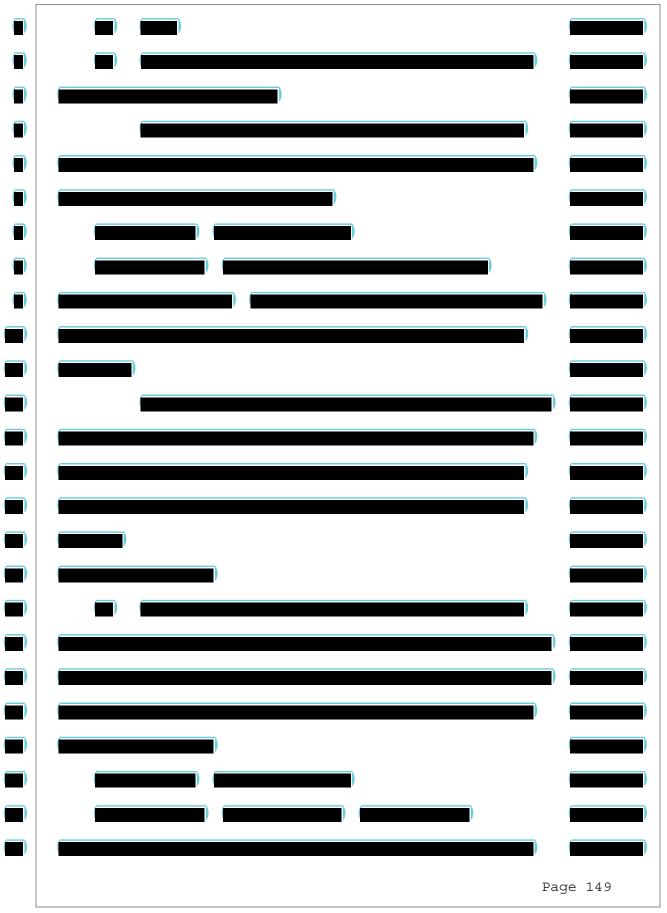
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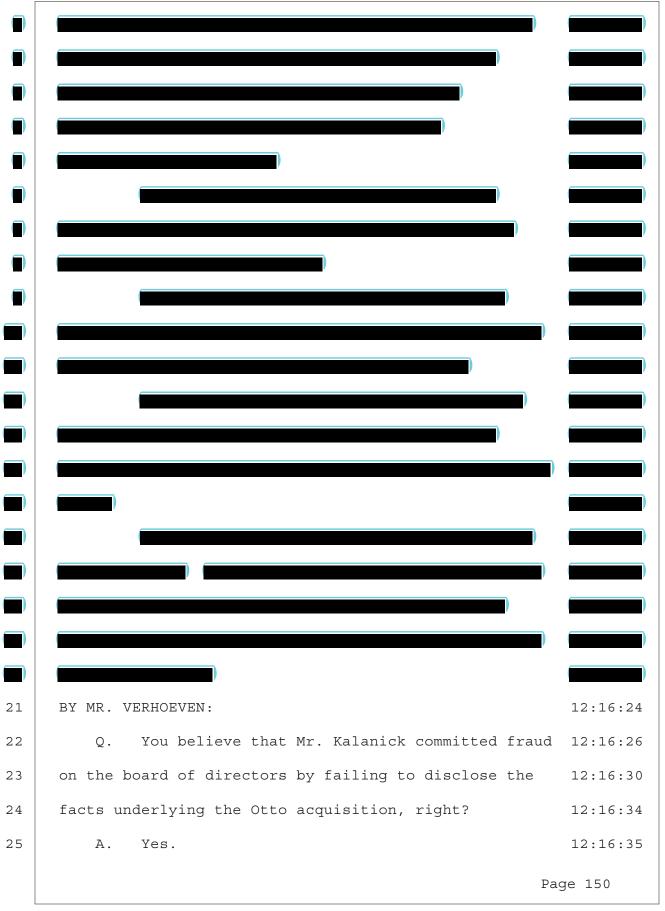
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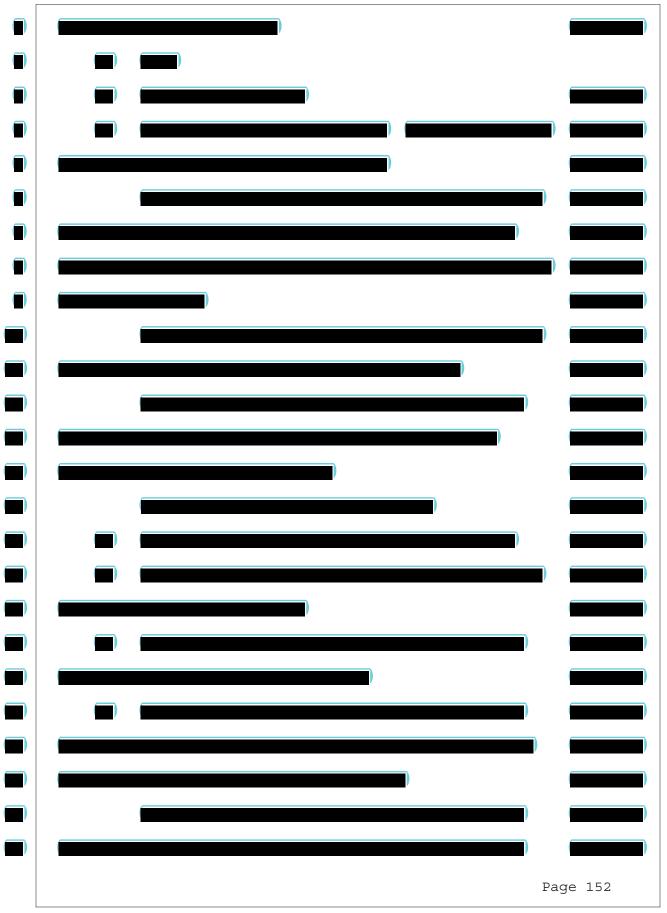
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1	MR. BRILLE: Object to form.	12:16:36
2	THE WITNESS: Yes.	12:16:37
3	BY MR. VERHOEVEN:	12:16:37
4	Q. And you would agree that that would not be	12:16:39
5	ethical or moral, to commit such a fraud?	12:16:42
6	MR. BRILLE: Same objection.	12:16:44
7	THE WITNESS: I think that's a fair statement.	12:16:45
12	THE REPORTER: You have microphones on, gentlemen.	12:17:28
13	I just wanted to let you know.	
14	MR. VERHOEVEN: I was just asking if there was	
15	anything else in the letter.	
16	BY MR. VERHOEVEN:	12:17:28
17	Q. You agree with the statements in this letter;	12:17:32
18	right?	12:17:32
19	A. I do.	12:17:33
	Pa	ge 151

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10	(Discussion off the record.)	12:20:22
11	BY MR. VERHOEVEN:	12:20:22
12	Q. All right. I'm going to mark as Exhibit 917	12:20:25
13	a Benchmark document from your firm that we just	12:20:30
14	received this morning.	12:20:31
15	A. Okay.	12:20:32
16	Q. For the record, it's Benchmark-Waymo-39	12:20:35
17	through 105.	12:20:43
18	(Plaintiff's Exhibit 917 was marked.)	12:21:01
19	BY MR. VERHOEVEN:	12:21:01
20	Q. It's a compilation of documents, it appears,	12:21:04
21	and it's got a on the front page, if you look at	12:21:10
22	the top right	12:21:11
23	MR. FLUMENBAUM: May I have a copy, please?	12:21:14
24	MR. VERHOEVEN: Do we have copies?	12:21:16
25	MR. FLUMENBAUM: Thank you.	12:21:18
	Pa	.ge 153

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1	MR. VERHOEVEN: I think that's all we have.	12:21:20
2	Hey, we got them by e-mail this morning. If	12:21:28
3	you have a com if you have a complaint you should	12:21:28
4	talk to the person who produced it.	12:21:32
5	MR. FLUMENBAUM: Well, just so the record is	12:21:35
6	clear, we produced it by e-mail at the request of	12:21:39
7	Waymo and	12:21:42
8	MR. VERHOEVEN: While we're here in	12:21:44
9	Morrison & Foerster.	12:21:45
10	MR. FLUMENBAUM: The subpoena was returnable today	12:21:48
11	at it was returnable today at your at your	12:21:51
12	offices.	12:21:52
13	We produced it by e-mail at your request in a	12:21:56
14	timely fashion, and these documents are part of, I	12:22:02
15	believe, Exhibit A. It's all part of the public	12:22:04
16	filing in Delaware, so it's not something that you	12:22:09
17	didn't have before.	12:22:12
18	MR. VERHOEVEN: Okay. So you'll represent this is	12:22:13
19	part of a public filing in Delaware?	12:22:16
20	MR. FLUMENBAUM: I believe it was. I have to take	12:22:18
21	a look at it, but I believe it was. I didn't check on	12:22:22
22	this particular one, but it's my understanding.	12:22:26
23	BY MR. VERHOEVEN:	12:22:26
24	Q. Mr. Gurley, do you have an understanding of	12:22:30
25	what your counsel referenced to with respect to this	12:22:33
	Рас	ge 154

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Counsel? 12:23:01  MR. FLUMENBAUM: I believe that that's what this 12:23:03  reflects. 12:23:04  BY MR. VERHOEVEN: 12:23:04  Q. Okay. Let's turn to Exhibit A. 12:23:06  A. Okay.  Q. And my first question is: Can you identify 12:23:13  this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:22  meeting. 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31			
A. I presume he's talking about the lawsuit that 12:22:43  was filed between Benchmark and Mr. Kalanick. 12:22:47  Q. Okay. So with the understanding that these 12:22:49  are exhibits in connection with that suit? 12:22:53  A. I  Q. That's what counsel is representing; right? 12:22:56  A. Okay. 12:22:58  MR. VERHOEVEN: Are you representing that, 12:23:00  Counsel? 12:23:01  MR. FLUMENBAUM: I believe that that's what this 12:23:03  reflects. 12:23:04  BY MR. VERHOEVEN: 12:23:04  BY MR. VERHOEVEN: 12:23:06  A. Okay. Q. Okay. Let's turn to Exhibit A. 12:23:06  A. Okay. Q. And my first question is: Can you identify 12:23:13  this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:23  meeting. 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	1	public filing in Delaware?	12:22:37
4 was filed between Benchmark and Mr. Kalanick.  Q. Okay. So with the understanding that these are exhibits in connection with that suit?  A. I  Q. That's what counsel is representing; right? 12:22:56 A. Okay.  MR. VERHOEVEN: Are you representing that, 12:23:00  Counsel?  MR. FLUMENBAUM: I believe that that's what this reflects.  BY MR. VERHOEVEN:  Q. Okay. Let's turn to Exhibit A.  Q. And my first question is: Can you identify 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:23  Q. Okay. So you had some negotiation back and 12:23:31  A. Correct.  Q. So does that refresh your recollection that 12:23:34	2	What's he talking about?	12:22:38
5         Q. Okay. So with the understanding that these         12:22:49           6         are exhibits in connection with that suit?         12:22:53           7         A. I         2. That's what counsel is representing; right?         12:22:56           9         A. Okay.         12:22:58           10         MR. VERHOEVEN: Are you representing that,         12:23:00           11         Counsel?         12:23:01           12         MR. FLUMENBAUM: I believe that that's what this         12:23:03           13         reflects.         12:23:04           14         BY MR. VERHOEVEN:         12:23:04           15         Q. Okay. Let's turn to Exhibit A.         12:23:06           16         A. Okay.         12:23:06           17         Q. And my first question is: Can you identify         12:23:13           18         this document?         12:23:14           19         A. I believe this is the letter that was signed         12:23:19           20         with by Travis at the end of the day of that         12:23:22           21         meeting.         12:23:23           22         Q. Okay. So you had some negotiation back and         12:23:31           24         A. Correct.         12:23:34	3	A. I presume he's talking about the lawsuit that	12:22:43
A. I  Q. That's what counsel is representing; right? 12:22:56  A. Okay. 12:22:58  MR. VERHOEVEN: Are you representing that, 12:23:00  Counsel? 12:23:01  MR. FLUMENBAUM: I believe that that's what this 12:23:03  reflects. 12:23:04  BY MR. VERHOEVEN: 12:23:04  Q. Okay. Let's turn to Exhibit A. 12:23:06  A. Okay. Q. And my first question is: Can you identify 12:23:13  this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	4	was filed between Benchmark and Mr. Kalanick.	12:22:47
7       A. I         8       Q. That's what counsel is representing; right?       12:22:56         9       A. Okay.       12:22:58         10       MR. VERHOEVEN: Are you representing that,       12:23:00         11       Counsel?       12:23:01         12       MR. FLUMENBAUM: I believe that that's what this       12:23:03         13       reflects.       12:23:04         14       BY MR. VERHOEVEN:       12:23:04         15       Q. Okay. Let's turn to Exhibit A.       12:23:06         16       A. Okay.         17       Q. And my first question is: Can you identify       12:23:13         18       this document?       12:23:14         19       A. I believe this is the letter that was signed       12:23:19         20       with by Travis at the end of the day of that       12:23:22         21       meeting.       12:23:23         22       Q. Okay. So you had some negotiation back and       12:23:23         23       forth and then this got signed?       12:23:31         24       A. Correct.       12:23:34         25       Q. So does that refresh your recollection that       12:23:34	5	Q. Okay. So with the understanding that these	12:22:49
8       Q. That's what counsel is representing; right?       12:22:56         9       A. Okay.       12:22:58         10       MR. VERHOEVEN: Are you representing that,       12:23:00         11       Counsel?       12:23:01         12       MR. FLUMENBAUM: I believe that that's what this       12:23:03         13       reflects.       12:23:04         14       BY MR. VERHOEVEN:       12:23:04         15       Q. Okay. Let's turn to Exhibit A.       12:23:06         16       A. Okay.         17       Q. And my first question is: Can you identify       12:23:13         18       this document?       12:23:14         19       A. I believe this is the letter that was signed       12:23:19         20       with by Travis at the end of the day of that       12:23:22         21       meeting.       12:23:23         22       Q. Okay. So you had some negotiation back and       12:23:23         23       forth and then this got signed?       12:23:31         24       A. Correct.       12:23:34         25       Q. So does that refresh your recollection that       12:23:34	6	are exhibits in connection with that suit?	12:22:53
9 A. Okay.  12:22:58  10 MR. VERHOEVEN: Are you representing that, 12:23:00  11 Counsel?  12 MR. FLUMENBAUM: I believe that that's what this 12:23:03  13 reflects. 12:23:04  14 BY MR. VERHOEVEN: 12:23:04  15 Q. Okay. Let's turn to Exhibit A. 12:23:06  16 A. Okay.  Q. And my first question is: Can you identify 12:23:13  18 this document? 12:23:14  19 A. I believe this is the letter that was signed 12:23:19  20 with by Travis at the end of the day of that 12:23:23  Q. Okay. So you had some negotiation back and 12:23:23  21 forth and then this got signed? 22 forth and then this got signed? 23 forth and then this got signed? 24 A. Correct. 25 Q. So does that refresh your recollection that 12:23:34	7	A. I	
MR. VERHOEVEN: Are you representing that, 12:23:00  Counsel? 12:23:01  MR. FLUMENBAUM: I believe that that's what this 12:23:03  reflects. 12:23:04  BY MR. VERHOEVEN: 12:23:04  Q. Okay. Let's turn to Exhibit A. 12:23:06  A. Okay.  Q. And my first question is: Can you identify 12:23:13  this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:22  meeting. 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	8	Q. That's what counsel is representing; right?	12:22:56
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13 reflects. 12:23:04  14 BY MR. VERHOEVEN: 12:23:04  15 Q. Okay. Let's turn to Exhibit A. 12:23:06  16 A. Okay.  17 Q. And my first question is: Can you identify 12:23:13  18 this document? 12:23:14  19 A. I believe this is the letter that was signed 12:23:19  20 with by Travis at the end of the day of that 12:23:22  21 meeting. 12:23:23  22 Q. Okay. So you had some negotiation back and 12:23:29  23 forth and then this got signed? 12:23:31  24 A. Correct. 12:23:31  25 Q. So does that refresh your recollection that 12:23:34	11	Counsel?	12:23:01
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A. Okay.  Q. And my first question is: Can you identify 12:23:13  this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:22  meeting. 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	14	BY MR. VERHOEVEN:	12:23:04
Q. And my first question is: Can you identify 12:23:13 this document? 12:23:14  A. I believe this is the letter that was signed 12:23:19 with by Travis at the end of the day of that 12:23:22 meeting. 12:23:23 Q. Okay. So you had some negotiation back and 12:23:29 forth and then this got signed? 12:23:31 A. Correct. 12:23:31 Q. So does that refresh your recollection that 12:23:34	15	Q. Okay. Let's turn to Exhibit A.	12:23:06
this document?  12:23:14  A. I believe this is the letter that was signed 12:23:19  with by Travis at the end of the day of that 12:23:22  meeting.  20 Okay. So you had some negotiation back and 12:23:23  Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed?  A. Correct.  22:23:31  Q. So does that refresh your recollection that 12:23:34	16	A. Okay.	
A. I believe this is the letter that was signed 12:23:19 with by Travis at the end of the day of that 12:23:22 meeting. 12:23:23 Q. Okay. So you had some negotiation back and 12:23:29 forth and then this got signed? 12:23:31 A. Correct. 12:23:31 Q. So does that refresh your recollection that 12:23:34	17	Q. And my first question is: Can you identify	12:23:13
with by Travis at the end of the day of that  12:23:22  21 meeting.  22 Q. Okay. So you had some negotiation back and  12:23:29  23 forth and then this got signed?  24 A. Correct.  25 Q. So does that refresh your recollection that  12:23:31	18	this document?	12:23:14
21 meeting. 12:23:23  22 Q. Okay. So you had some negotiation back and 12:23:29  23 forth and then this got signed? 12:23:31  24 A. Correct. 12:23:31  25 Q. So does that refresh your recollection that 12:23:34	19	A. I believe this is the letter that was signed	12:23:19
Q. Okay. So you had some negotiation back and 12:23:29  forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	20	with by Travis at the end of the day of that	12:23:22
forth and then this got signed? 12:23:31  A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	21	meeting.	12:23:23
A. Correct. 12:23:31  Q. So does that refresh your recollection that 12:23:34	22	Q. Okay. So you had some negotiation back and	12:23:29
Q. So does that refresh your recollection that 12:23:34	23	forth and then this got signed?	12:23:31
	24	A. Correct.	12:23:31
Page 155	25	Q. So does that refresh your recollection that	12:23:34
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1	he resigned on the same day as the meeting?	12:23:40
2	A. Yeah, yeah. I I wasn't trying to say he	12:23:42
3	didn't. You you had said in the first meeting, and	12:23:45
4	they met and broke, just like we've been doing, met	12:23:49
5	and broke. So I was just it was just a question of	12:23:51
6	the definition of "first."	12:23:52
7	So it did happen all in one day.	12:23:55
8	Q. Okay.	
9	A. It was over a series of long many hours, I	12:23:59
10	think.	12:23:59
11	Q. Okay. And here he says, second-to-the-last	12:24:00
12	paragraph:	12:24:02
13	"I will make a public announcement of the	12:24:04
14	foregoing no later than 5:00 p.m. PDT Thursday, June	12:24:08
15	22, 2017."	
16	Does that refresh your recollection as to	12:24:13
17	when it was announced?	12:24:15
18	A. Well, this was his commitment to announce. I	12:24:18
19	don't know exactly when it was announced, which was	12:24:21
20	your question.	
21	Q. You don't have any reason to believe it	12:24:24
22	wasn't announced, do you?	12:24:25
23	A. It was clearly announced.	12:24:28
24	MR. VERHOEVEN: What number was that?	12:24:40
25	THE REPORTER: That one was 17, 917.	12:24:43
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1	MR. VERHOEVEN: All right. Coming up to the end	12:25:04
2	here right on schedule.	12:25:12
3	Let's mark as 917	12:25:15
4	MR. FLUMENBAUM: 918.	12:25:16
5	MR. VERHOEVEN: 918 a draft of a verified	12:25:23
6	complaint, Benchmark Capital Partners versus Travis	12:25:31
7	Kalanick and Uber Technologies.	12:25:34
8	(Plaintiff's Exhibit 918 was marked.)	12:25:43
9	MR. FLUMENBAUM: I believe you said draft, as	12:25:45
10	opposed to a verified complaint.	12:25:49
11	MR. VERHOEVEN: Let's see. Was it signed? It has	12:25:56
12	E-signatures on it. So you'll represent this was	12:26:00
13	filed?	12:26:00
14	MR. FLUMENBAUM: I believe it was. That's my	12:26:03
15	understanding of what was produced.	12:26:04
16	MR. VERHOEVEN: Okay. So with that clarification,	12:26:06
17	can you identify Exhibit 918?	12:26:09
18	MR. FLUMENBAUM: Can I have a copy, please?	12:26:11
19	Thank you.	12:26:13
20	THE WITNESS: I believe this is the lawsuit we	12:26:24
21	just discussed.	12:26:26
22	BY MR. VERHOEVEN:	12:26:26
23	Q. Did you approve the filing of this lawsuit?	12:26:28
24	A. I did.	12:26:29
25	Q. Did you review the complaint before it was	12:26:30
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1	filed?	12:26:31
2	A. Yes.	12:26:31
3	Q. Do you agree with what the statements are in	12:26:34
4	the complaint?	12:26:35
5	A. I do.	12:26:35
6	Q. I'd direct your attention to page 5 of I'm	12:26:55
7	sorry to paragraph 5 of the complaint.	12:27:01
8	Do you see it says:	12:27:21
9	"Kalanick intentionally concealed and failed	12:27:29
10	to disclose his gross mismanagement and other	12:27:32
11	misconduct at Uber."	12:27:34
12	Do you see that?	12:27:38
13	A. Yes.	12:27:40
14	Q. And then it continues:	12:27:41
15	"These matters included, among others,	12:27:45
16	Kalanick's personal involvement in causing Uber to	12:27:49
17	acquire a self-driving vehicle start-up that,	12:27:53
18	according to a confidential report, not disclosed to	12:27:56
19	Benchmark at the time (the 'Stroz report'), allegedly	12:28:04
20	harbored trade secrets stolen from a competitor."	12:28:08
21	Do you see that?	12:28:09
22	A. Yes.	12:28:09
23	Q. And that's a reference to the Waymo	12:28:12
24	litigation and the facts that let me rephrase.	12:28:22
25	That's referring to the Otto acquisition?	12:28:27
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1	A. Correct.	12:28:27
2	MR. FLUMENBAUM: Objection as to form.	12:28:30
3	MR. BRILLE: Objection as to form.	12:28:31
4	THE WITNESS: Sorry.	12:28:31
5	MR. FLUMENBAUM: You can answer.	12:28:32
6	BY MR. VERHOEVEN:	12:28:32
7	Q. And Mr. Kalanick's personal conduct, with	12:28:38
8	respect to the Otto acquisition, constituted gross	12:28:44
9	mismanagement and misconduct.	12:28:45
10	That's what you're saying here; right?	12:28:47
11	A. Yes.	12:28:47
12	Q. And the specific actions that this is	12:28:56
13	referencing to that Mr. Kalanick undertook, are those	12:29:01
14	the actions you've already testified to or is there	12:29:03
15	anything in addition to that?	12:29:05
16	A. I think we've already discussed it.	12:29:09
17	Q. Okay. I direct your attention to paragraph	12:29:31
18	6.	12:29:45
19	And the second take a second and review	12:29:56
20	that.	12:29:57
21	A. (Witness reviews document.)	
22	Q. Do you see at the start it says:	12:30:12
23	"Kalanick knew Benchmark never would have	12:30:14
24	approved," and then it goes on, "if Benchmark had	12:30:20
25	known the truth about Kalanick's prior conduct."	12:30:24
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1	Do you see that?	12:30:24
2	A. Yes.	12:30:25
3	Q. And this refers, in part, to your prior	12:30:30
4	testimony that if Benchmark had known about the	12:30:35
5	information contained in the Stroz report, it would	12:30:37
6	never have agreed to this amendment, right?	12:30:45
7	MR. BRILLE: Object to the form.	12:30:46
8	MR. FLUMENBAUM: Object to the form.	12:30:47
9	You can answer.	
10	BY MR. VERHOEVEN:	
11	Q. Well, you're correct. Let me rephrase.	12:30:51
12	This refers to your prior testimony that	12:30:54
13	Benchmark never would have approved the transaction	12:30:56
14	had it been aware of the Stroz report, correct?	12:31:02
15	MR. BRILLE: Same objection.	12:31:03
16	MR. FLUMENBAUM: Objection as to form, but you	12:31:05
17	may	12:31:06
18	THE WITNESS: The only clarification I would make	12:31:08
19	is that there are many other matters, also.	12:31:10
20	BY MR. VERHOEVEN:	
21	Q. Yeah.	
22	A. But this is one of those. Yes, correct.	12:31:14
23	Q. But it's your contention that Benchmark would	12:31:18
24	not have approved the amended certificate of	12:31:18
25	incorporation referenced here, or the voting	12:31:22
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1	agreement, if it had known the real facts behind the	12:31:25
2	Otto acquisition, isn't it?	12:31:28
3	MR. BRILLE: Object to form.	12:31:29
4	MR. FLUMENBAUM: You may answer.	12:31:30
5	THE WITNESS: Along with other things. But, yes.	12:31:32
6	That was one of of many other things.	12:31:36
7	BY MR. VERHOEVEN:	12:31:36
8	Q. The next sentence says:	12:31:46
9	"Kalanick also understood that these matters,	12:31:49
10	once revealed, would likely force him to resign as	12:31:53
11	Uber's CEO."	12:31:54
12	Do you see that?	12:31:55
13	A. I do.	12:31:56
14	Q. And one of those matters is the facts	12:32:00
15	underlying the Otto acquisition, correct?	12:32:02
16	MR. BRILLE: Object to form.	12:32:04
17	MR. FLUMENBAUM: You may answer.	12:32:05
18	THE WITNESS: Yes, one of those facts.	12:32:08
19	BY MR. VERHOEVEN:	12:32:08
20	Q. And throughout this sentence, if it refers to	12:32:21
21	these matters, your answer would be the same, that	12:32:24
22	included in the matters would be the Otto transaction?	12:32:28
23	MR. FLUMENBAUM: Objection as to form. But	12:32:32
24	BY MR. VERHOEVEN:	
25	Q. I mean, you can see the next okay. I was	
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1	trying to shorten it.	12:32:35
2	The next sentence says:	12:32:36
3	"Kalanick, therefore, knowingly concealed	12:32:38
4	these matters from Benchmark and Uber's board to	12:32:43
5	obtain, for his personal benefit"	12:32:47
6	And then it goes on. Do you see that?	12:32:49
7	A. Yes.	12:32:51
8	Q. "These matters" reference, in part, the Otto	12:32:55
9	acquisition?	12:32:56
10	A. In part.	12:32:57
11	Q. And the testimony you gave about it earlier	12:32:59
12	today?	12:33:00
13	A. That is correct.	12:33:00
14	Q. Okay. Why would the in your view, why	12:33:12
15	would the facts underlying the Otto acquisition, if	12:33:16
16	known by Benchmark and the board, likely have forced	12:33:21
17	Travis Kalanick to resign?	12:33:24
18	MR. BRILLE: Object to form.	12:33:27
19	MR. FLUMENBAUM: Objection to form. But again,	12:33:28
20	you can't disclose any of the specifics that are in	12:33:32
21	the Stroz report.	12:33:34
22	THE WITNESS: Understood.	12:33:39
23	So one, just reiterating, like, there were	12:33:46
24	multiple incidents that led us to this conclusion and	12:33:50
25	assess this belief in this lawsuit.	12:33:54
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1	With respect to the Otto acquisition, there's	12:33:57
2	actually more detail later in the complaint. But it's	12:34:00
3	become public knowledge, not involving the Stroz	12:34:05
4	report, that at the time the board was asked to	12:34:09
5	approve this, that that Travis and other members of	12:34:13
6	the management team had knowledge that there were five	12:34:16
7	disks that were in Anthony's possession, and that he	12:34:23
8	said there was Google information on those disks. So	12:34:25
9	that's now in the public record.	12:34:29
10	When you look at the we've already been	12:34:32
11	through it. But you look at the deal, and the fact	12:34:35
12	that so much of it weighed on him and the fact that	12:34:39
13	there were large indemnity provisions put aside	12:34:45
14	specifically for him, I don't know of a way you could	12:34:50
15	possibly present that to a board	
	and and that be okay. Like, I I	12:35:02
17	can't fathom that.	12:35:05
18	BY MR. VERHOEVEN:	
19	Q. When you referred to "him," you're referring	12:35:08
20	to Mr. Levandowski, right, in that answer?	12:35:10
21	MR. BRILLE: Object to form.	12:35:13
22	THE WITNESS: It's in the public record that	12:35:15
23	that the Uber executives were aware I'll I'll	12:35:17
24	try not to use pronouns were aware that Anthony	12:35:21
25	Levandowski had the five disks.	12:35:24
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1	When when I was talking about you know,	12:35:26
2	this is the largest recipient of the proceeds from the	12:35:32
3	acquisition and the leader of the group and the one	12:35:38
4	that stands to benefit the most from the	12:35:40
5	indemnification. So , when	12:35:45
6	you have this fact, is a is misrepresentation, you	12:35:53
7	know, from my point of view.	12:35:57
8	BY MR. VERHOEVEN:	12:35:57
9	Q. Okay. Thank you.	12:35:58
10	And why do you think Mr. Kalanick knowingly	12:36:16
11	concealed those issues?	12:36:18
12	MR. FLUMENBAUM: Objection to form.	12:36:22
13	MR. BRILLE: Objection to form.	12:36:24
14	BY MR. VERHOEVEN:	12:36:24
15	Q. Well, let me read the complaint. Paragraph	12:36:25
16	6:	
17	"Kalanick, therefore, knowingly concealed	12:36:30
18	these matters from Benchmark and Uber's board."	12:36:34
19	And then it goes on. Do you see that?	12:36:34
20	A. I do.	12:36:35
21	Q. Why do you think he did?	12:36:36
22	A. I'd be speculating as to his intent. I don't	12:36:40
23	know.	12:36:40
24	Q. Well, it says here:	12:36:40
25	"For his personal benefit, the unilateral	12:36:47
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1	right to pack the board with three additional	12:36:50
2	directors of his choosing."	
3	You stand by that statement; right?	12:36:52
4	A. I do.	12:36:53
5	Q. Any other reasons?	12:36:55
6	A. I I I'd be guessing that what his	12:37:02
7	intentions were.	12:37:03
8	Q. Did you ever talk to Mr. Kalanick about why	12:37:05
9	he concealed the facts underlying the Otto	12:37:08
10	transaction?	12:37:09
11	A. I have not.	12:37:10
12	Q. What about with other executive management at	12:37:14
13	Uber?	12:37:30
14	A. Well, not outside of conversations that were	12:37:34
15	privileged with the with the legal team.	12:37:36
16	Q. I direct your attention to paragraph 33.	12:38:05
17	It's on page 15 of Exhibit 918.	12:38:08
18	MR. FLUMENBAUM: I'm sorry. Hold on.	12:38:10
19	Thank you.	12:38:11
20	BY MR. VERHOEVEN:	12:38:11
21	Q. Are you ready for questions?	12:38:27
22	A. Yes.	12:38:27
23	Q. Is this the place where you testified earlier	12:38:30
24	the deal the details of the Otto transaction were	12:38:35
25	set forth in more detail, this section entitled	12:38:44
	Pa	ge 165

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1		
1	A. Yes, this section. That's fair. Correct.	12:38:46
2	Q. You've referenced there's a I'm sorry.	12:39:07
3	The complaint references:	12:39:12
4	"Kalanick praised Levandowski as one of the	12:39:15
5	world's leading autonomous engineers and an	12:39:20
6	entrepreneur with a real sense of urgency.	12:39:24
7	"Kalanick further described Levandowski as	12:39:26
8	his brother from another mother."	12:39:30
9	The allegation is and your belief is	12:39:34
10	that he was saying all that, but withholding the	12:39:37
11	information he had from the Stroz investigation;	12:39:41
12	right?	12:39:41
13	MR. BRILLE: Object to form.	12:39:44
14	MR. FLUMENBAUM: Object to form. You can try to	12:39:46
15	answer that.	12:39:49
16	THE WITNESS: These are these are taken from	12:39:50
17	from as you can see, from public statements that he	12:39:53
18	made.	12:39:54
19	His praise for Anthony in these public venues	12:39:59
20	is consistent with what he presented at the board	12:40:03
21	level, and so there's no inconsistency here.	12:40:06
22	I and as you as you assert, he did not	12:40:12
23	disclose these other details, you know. And I and	12:40:17
24	I had mentioned, and they're later in here in the	12:40:20
25	complaint, that some of that is now public with regard	12:40:23
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1	to the five-disk matter.	12:40:26
2	BY MR. VERHOEVEN:	12:40:26
3	Q. The last sentence of this paragraph says:	12:40:29
4	"In discussing the Otto transaction in 2016,	12:40:32
	_	
5	Kalanick repeatedly emphasized to Gurley and other	12:40:36
6	board members that Uber's acquisition of Otto,	12:40:39
7	employment of Anthony Levandowski, would be	12:40:41
8	transformative for Uber's business."	12:40:44
9	Do you see that?	12:40:45
10	A. I do.	12:40:46
11	Q. What is that referring to?	12:40:48
12	A. Once again, consistent with what we discussed	12:40:53
13	earlier, there was a a big part of the argument for	12:40:57
14	why we needed to do this transaction was to employ	12:41:01
15	Anthony Levandowski, who who Mr. Kalanick believed	12:41:04
16	was one of the leading experts on autonomous vehicles	12:41:07
17	in in the in the world.	12:41:10
18	Q. Was employing Anthony Levandowski worth	12:41:14
19	\$680 million?	12:41:17
20	MR. BRILLE: Object to form.	12:41:17
21	MR. FLUMENBAUM: Object to form. We've sort of	12:41:19
22	been over this.	12:41:20
23	You can answer it again.	12:41:22
24	THE WITNESS: Yeah, I don't I don't mind going	12:41:24
25	over it again.	12:41:25
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8 9 10 11 it s	MR. VERHOEVEN:	12:41:42
8 9 10 11 it	MR. VERHOEVEN:	12.41.42
8 9 10 11 it	MR. VERHOEVEN:	12.41.42
8 9 10 11 it	MR. VERHOEVEN:	12.41.42
8 9 10 11 it	MR. VERHOEVEN:	12.41.42
8 9 10 11 it	MR. VERHOEVEN:	12.41.42
9 10 11 it		10.71.74
10   it a	Q. I direct your attention to paragraph 67.	12:42:14
11 it :	A. Oh, wow.	12:42:15
	Q. Page 30. All right. Take a second and read	12:42:31
12	and tell me when you're ready to answer questions.	12:42:32
	MR. FLUMENBAUM: Paragraph 67?	12:42:36
13	MR. VERHOEVEN: Paragraph 67.	12:42:38
14	(Witness reviews document.)	12:42:49
15	THE WITNESS: Okay.	12:42:50
16 BY I	MR. VERHOEVEN:	12:42:50
17	Q. And this this references:	12:42:51
18	"Kalanick's fraudulent statements and	12:42:54
19 omi	ssions breached his fiduciary duties, including,"	12:42:57
20 and	then it gets more specific.	12:42:59
21	Do you see that?	12:43:00
22	A. Um-hum.	12:43:01
23	Q. Which of Mr. Kalanick's statements related to	12:43:08
24 the	Otto transaction breached his fiduciary duties?	12:43:13
25	A. It would seem obvious that this statement	12:43:22
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1	that was made to the board	
	left me	12:43:37
5	and I can't speak for the other board members with	12:43:40
6	an impression that is remarkably different from that	12:43:44
7	that I hold today.	12:43:46
8	Q. And I take it it's your belief that his	12:43:55
9	omission of that critical information during his	12:44:00
10	presentation also constituted fraud and a breach of	12:44:09
11	his fiduciary duties?	12:44:11
12	MR. BRILLE: Object to form.	12:44:12
13	THE WITNESS: That is correct. Once again, this	12:44:14
14	statement refers to other issues also. But with	12:44:20
15	regard to that specific issue, you are correct.	12:44:24
16	BY MR. VERHOEVEN:	12:44:24
17	Q. Does anything else come to mind, still on	12:44:47
18	paragraph 67 understanding it's a general	12:44:52
19	statement, but focusing specifically on the Otto	12:44:55
20	acquisition portion of it.	12:44:57
21	A. Um-hum.	12:44:59
22	Q. Does anything else come to mind, in addition	12:45:02
23	to what you've already testified to, that was either a	12:45:09
24	statement or omission by Mr. Kalanick that breached	12:45:13
25	his fiduciary duties or constituted fraud?	12:45:17
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1	A. Related to that particular transaction?	12:45:25
2	Q. Right. Or related to Otto, related to	12:45:28
3	Mr. Levandowski.	12:45:29
4	A. Yeah. Yeah.	12:45:31
5	No, not that we haven't previously discussed.	12:45:34
6	MR. VERHOEVEN: Perhaps we should take a short	12:46:02
7	break, and I'll just review I may have another five	12:46:06
8	minutes of questions	12:46:07
9	MR. FLUMENBAUM: Okay. Great.	12:46:08
10	MR. VERHOEVEN: but I'm coming up to the end.	12:46:10
11	MR. FLUMENBAUM: Great.	12:46:12
12	THE VIDEOGRAPHER: Off the record at 12:46 p.m.	12:46:14
13	(Recess taken.)	12:46:15
14	THE VIDEOGRAPHER: Back on the record at 12:54	12:54:08
15	p.m.	12:54:08
16	BY MR. VERHOEVEN:	12:54:08
17	Q. I direct your attention to paragraph 37 of	12:54:17
18	Exhibit 918, the Benchmark complaint.	12:54:22
19	A. Um-hum.	12:54:23
20	Q. And read 37 to yourself and tell me when	12:54:27
21	you're ready to answer questions.	12:54:29
22	(Witness reviews document.)	12:54:48
23	A. Okay.	12:54:49
24	Q. So earlier well, I direct your attention	12:54:52
25	to the phrase "interim findings."	12:54:54
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1	Do you see it's sprinkled through the	12:54:57
2	paragraph there?	12:54:58
3	A. Yes.	12:54:58
4	Q. When we testified earlier about this I	12:55:02
5	don't want to go over it again I think you just	12:55:05
6	said you and I just said "the Stroz report."	12:55:09
7	But were you referencing, specifically in	12:55:11
8	this time period, the interim findings of the Stroz	12:55:14
9	investigation?	12:55:16
10	MR. FLUMENBAUM: Objection as to form.	12:55:19
11	BY MR. VERHOEVEN:	12:55:19
12	Q. When you testified about if something had	12:55:22
13	been disclosed, if the Stroz report had been	12:55:25
14	disclosed, more accurately what you meant is if the	12:55:28
15	interim findings of the Stroz report of the Stroz	12:55:30
16	investigation had been disclosed; is that right?	12:55:33
17	A. This particular complaint was based on all	12:55:44
18	that information that was in the public record.	12:55:46
19	There are documents related to this lawsuit	12:55:50
20	that highlight that, as of this date, there were these	12:55:54
21	interim findings available.	12:55:55
22	Q. Right.	
23	A. And we're merely highlighting that those were	12:55:59
24	never disclosed to the board.	12:56:01
25	Q. Okay. I direct your attention to paragraph	12:56:12
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1	77 of the complaint, Exhibit 918.	12:56:16
2	There's a sentence in here that says:	12:56:33
3	"At the time, Benchmark could not have known	12:56:38
4	of the matters Kalanick intentionally concealed, many	12:56:42
5	of which were within Kalanick's exclusive knowledge or	12:56:46
6	only known to Kalanick and an 'inner circle' of Uber	12:56:53
7	executives loyal to him (many of whom have since been	12:56:57
8	terminated or forced to resign due to the misconduct	12:57:01
9	described above)."	12:57:06
10	Do you see that sentence?	12:57:08
11	A. Um-hum.	12:57:10
12	Q. Who was in Kalanick's inner circle, as	12:57:13
13	referenced in this paragraph, to the extent you have	12:57:19
14	knowledge?	12:57:19
15	A. Sure. The once again, I would reiterate	12:57:24
16	that this complaint and this paragraph reference many	12:57:29
17	issues, not just those related to to the Otto	12:57:33
18	acquisition. And so that phrase may or may not have	12:57:38
19	applicability to what we're discussing today.	12:57:41
20	You know, when you look at the parenthetical	12:57:44
21	phrase about	12:57:49
22	Q. I'm just asking about who the who the	12:57:51
23	inner circle is.	12:57:53
24	A. I I was getting to that.	12:57:55
25	Q. Okay.	
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1	A. So when you look at the phrase about	12:57:59
2	termination or forced to resign	12:58:02
3	THE WITNESS: Is this part confidential also?	12:58:04
4	Because I I	12:58:07
5	MR. FLUMENBAUM: I think the resignations are all	12:58:10
6	public, aren't they?	12:58:11
7	MR. BRILLE: The fact of a resignation is	12:58:14
8	probably is not privileged, the fact of a	12:58:18
9	resignation. To the extent that you	12:58:22
10	THE WITNESS: I just don't want to get to you	12:58:25
11	know.	12:58:25
12	BY MR. VERHOEVEN:	12:58:25
13	Q. Okay. I'm not asking you about the	12:58:36
14	parenthetical. I'm just asking the words "inner	12:58:39
15	circle."	12:58:40
16	A. Yeah, I know. It informs it though.	12:58:43
17	Well, let me just state this.	12:58:50
18	With regard to the specific Otto acquisition,	12:58:55
19	you know, as noted in 38, there were I think it's	12:59:02
20	38. Yeah. There were you know, you have two other	12:59:06
21	parties there that were aware of this fact about the	12:59:09
22	five disks that weren't that wasn't disclosed to	12:59:15
23	the board, so there's there's two names right	12:59:18
24	there.	12:59:18
25	Q. What are the two names, for the record?	12:59:18
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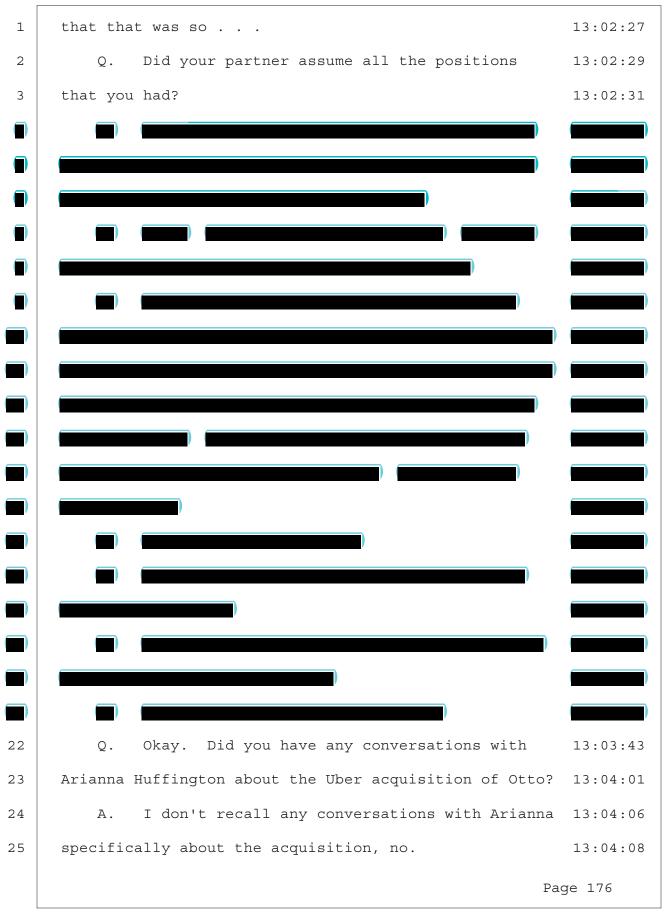
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1	A. Nina Qi and Cameron.	12:59:24
2	Q. So with respect to the Waymo dispute or	12:59:29
3	the withdrawn.	12:59:30
4	With respect to the Otto acquisition, this	12:59:35
5	phrase you interpret to reference those two	12:59:37
6	individuals?	12:59:38
7	A. Yes.	12:59:38
8	Q. Has either of those two individuals been	12:59:47
9	terminated, to your knowledge?	12:59:49
10	A. No.	12:59:49
11	Q. All right.	
12	MR. FLUMENBAUM: Can I have a all right.	13:00:05
13	Forget it. Go ahead.	13:00:07
14	MR. VERHOEVEN: So what did you want to talk to	13:00:10
15	him about?	13:00:10
16	MR. FLUMENBAUM: No, just go ahead.	13:00:13
17	MR. VERHOEVEN: Okay.	13:00:13
18	BY MR. VERHOEVEN:	
19	Q. There came a time in which you resigned from	13:00:16
20	the board of Uber?	13:00:17
21	A. Correct.	13:00:17
22	Q. When was that, roughly?	13:00:19
23	A. I think it was a couple of days after Travis	13:00:27
24	signed the resignation letter we've already looked at.	13:00:32
25	Q. Why did you resign?	13:00:45
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1	A. The members of of our partnership and I	13:00:49
2	had a lengthy discussion about trying to whether or	13:00:56
3	not it made sense to swap out the board member that	13:01:00
4	represented Benchmark with Uber, in an effort to try	13:01:04
5	and move things forward in a positive direction.	13:01:08
6	The the conversations and back and forth	13:01:13
7	and events that led to the meeting in Chicago, I think	13:01:16
8	it's safe to say, had a strain on the relationship	13:01:21
9	between myself and and Mr. Kalanick. And it was	13:01:29
10	merely a decision from our firm to try and put a new	13:01:35
11	foot forward to try and create kind of a new day and	13:01:39
12	new relationship with the board.	13:01:41
13	Q. Did you have any discussions with anyone at	13:01:45
14	Uber about your resignation before you resigned?	13:01:48
15	A. I did not.	13:01:49
16	Q. What about with other board members?	13:01:51
17	A. I did not.	13:01:53
18	Q. Have you had any conversations with anybody	13:02:01
19	at Uber since you've resigned from the board?	13:02:04
20	A. Yeah. There were there were numerous	13:02:04
21	conversations, as part of the handoff process I was	13:02:13
22	involved in, all of those committees. I wanted to	13:02:16
23	make sure that that my partner got the benefit of	13:02:19
24	the you know, the transfer of information, that	13:02:23
25	kind of thing. We had a lot of meetings to make sure	13:02:26
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Q. Did Ms. Huffington participate and contribute	13:04:13
to these board meetings we went through on this	13:04:16
subject?	13:04:17
A. I don't recall any specific commentary	13:04:21
related to the board meeting that she made related	13:04:24
to the board meeting around the Otto acquisition.	13:04:29
So I have recollection of those conversations	13:04:47
but not I don't remember her opining directly on	13:04:51
the Otto acquisition.	13:04:53
Q. Do you believe she did?	13:04:56
A. I I don't I don't recall.	13:04:58
Q. Do you recall sending Ms. Huffington a copy	13:05:05
of the Stroz report?	13:05:07
A. I don't recall doing that.	13:05:11
Q. Why would you have done that, if you did?	13:05:16
MR. BRILLE: Object to form.	13:05:17
BY MR. VERHOEVEN:	13:05:17
Q. Okay. I'll represent that you did.	13:05:19
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	to these board meetings we went through on this subject?  A. I don't recall any specific commentary related to the board meeting that she made related to the board meeting around the Otto acquisition.  So I have recollection of those conversations but not I don't remember her opining directly on the Otto acquisition.  Q. Do you believe she did?  A. I I don't I don't recall.  Q. Do you recall sending Ms. Huffington a copy of the Stroz report?  A. I don't recall doing that.  Q. Why would you have done that, if you did?  MR. BRILLE: Object to form.  BY MR. VERHOEVEN:  Q. Okay. I'll represent that you did.

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		13:05:33
2	Q. Did you have a discussion with her about the	13:05:34
3	report?	13:05:35
4	MR. FLUMENBAUM: You can answer you can answer	13:05:38
5	that yes or no, if you recall.	13:05:40
6	THE WITNESS: I I I just don't recall.	13:05:46
7	BY MR. VERHOEVEN:	13:05:46
8	Q. Do you think you would have?	13:05:49
9	MR. FLUMENBAUM: Objection as to form.	13:05:51
10	THE WITNESS: It's possible.	13:05:52
11	BY MR. VERHOEVEN:	13:05:52
12	Q. I mean, you sent it to her?	13:05:55
13	A. Okay. If I did, then, it's likely that I	13:05:58
14	did.	13:05:58
15	Q. Have a conversation?	13:05:59
16	A. Yeah.	
17	Q. You can't remember the substance of any	13:06:02
18	conversation?	13:06:04
19	MR. FLUMENBAUM: Asked and answered.	13:06:08
20	THE WITNESS: I I don't recall any specifics.	13:06:11
21	MR. VERHOEVEN: You're supposed to only object to	13:06:12
22	form.	13:06:13
23	BY MR. VERHOEVEN:	13:06:13
24	Q. What about Mr. Bonderman? Did you send a	13:06:19
25	copy of the report to him?	13:06:21
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1	Α.	I don't recall.	13:06:22
2	Q.	Do you remember any conversations you had	13:06:26
3	with Mr.	Bonderman about the report or the Otto	13:06:31
4	acquisit:	ion?	13:06:32
19	Α.	I don't remember any specific conversations.	13:07:32
20	I would a	say that it's my opinion that he was also of	13:07:40
21	the belie	ef that Anthony should have been terminated a	s 13:07:43
22	soon as l	he pled the Fifth.	13:07:45
23	Q.	Is that based on conversations with him	13:07:47
24	generally	y?	13:07:49
25	A.	Yes.	13:07:49
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1	Q. And you can you recall the specifics of	13:07:51
2	any of those conversations?	13:07:52
3	A. I don't remember any of the specifics.	13:07:55
4	Q. Did he contribute during board meetings on	13:07:57
5	this subject?	13:07:59
6	A. Yes.	13:07:59
7	Q. Can you remember what he said in any of those	13:08:01
8	meetings?	13:08:02
9	A. I I don't. I just know that his I know	13:08:04
10	that that was his point of view.	13:08:06
11	MR. VERHOEVEN: Thank you very much, Mr. Gurley.	13:08:28
12	I have no further questions at this time.	13:08:31
13	We have, as you've noticed, several privilege	13:08:34
14	instructions which are currently in dispute. And if	13:08:39
15	there's a ruling that certain documents have to be	13:08:43
16	produced, we just so you know, we may take the	13:08:47
17	position that you have to come back and answer some	13:08:49
18	questions about that.	13:08:50
19	THE WITNESS: Okay.	13:08:50
20	MR. VERHOEVEN: Thank you very much for your time.	13:08:53
21	THE WITNESS: Thank you.	
22	MR. FLUMENBAUM: Anybody else?	13:08:54
23	MR. BRILLE: Not here, no.	13:08:56
24	MR. FLUMENBAUM: Thank you. Thank you all.	13:08:58
25	THE VIDEOGRAPHER: This concludes today's	13:09:01
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1	deposition of William Gurley, consisting of three	13:09:04
2	DVDs.	13:09:05
3	We're off the record at 1:09 p.m.	13:09:09
4	(Whereupon, the deposition was adjorned at	
5	1:09 p.m.)	
6		
7		
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15	JOHN WILLIAM GURLEY	
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1	FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2	I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
	declare:
3	That, prior to being examined, the witness named
	in the foregoing deposition was by me duly sworn
4	pursuant to Section 30(f)(1) of the Federal Rules of
	Civil Procedure and the deposition is a true record of
5	the testimony given by the witness;
6	That said deposition was taken down by me in
	shorthand at the time and place therein named and
7	thereafter reduced to text under my direction;
8	X That the witness was requested to
	review the transcript and make any changes to the
9	transcript as a result of that review pursuant to
	Section 30(e) of the Federal Rules of Civil Procedure;
10	No changes have been provided by the
	witness during the period allowed;
11	The changes made by the witness are
12	appended to the transcript;
13	No request was made that the transcript
	be reviewed pursuant to Section 30(e) of the Federal
14	Rules of Civil Procedure.
15	I further declare that I have no interest in the
	event of the action.
16	I declare under penalty of perjury under the laws
17	of the United States of America that the foregoing is
	true and correct.
18	WITNESS my hand this 25th day of August, 2017.
19	
20	
21	
22	01 70.01
23	Anna Ulimberley
24	
25	ANRAE WIMBERLEY, CSR NO. 7778